*HON'BLE SRI JUSTICE P.S. NARAYANA

+W.P.Nos.15399, 16824, 17533, 17778, 18346, 18671 & 21931 of 2006

% 24-1-2007

Yarlagadda Venkateswara Rao .. Petitioner

Vs.

$ Government of Andhra Pradesh
Represented by its Principal Secretary,
Panchayat Raj Department,
Secretariat Buildings,
Hyderabad and others .. Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioner in W.P.No.15399/06 : Sri R.V. Chalapathi
Counsel for petitioner in W.P.No.17533/06 : Sri V.Tulasi Reddy
Counsel for petitioner in W.P.No.18346/06 : Sri Venkata Rangadas Kanuri
Counsel for petitioners in W.P.No.18671/06 : Sri K.R. Prabhakar
Counsel for petitioner in W.P.No.21931/06 : Sri V.Brahmaiah

Chowdary

Counsel for petitioners in W.P.No.16824/06 : Sri V.R. Avula

Counsel for petitioner in W.P.No.17778/06 : Sri V.R. Avula

^ Counsel for respondents : Sri V.V. Prabhakar Rao

Counsel for 5th respondent in W.P.No.15399/06 : Sri Y.S. Sai Prasad

Counsel for 7th respondent in W.P.No.18671/06:Sri V.Ravinder Rao

Counsel for 6th respondent in W.P.No.18671/06 : Sri Kowturi Vinay

Kumar

Counsel for contesting respondents : Sri Jagan Mohan Reddy

G.P. for Panchayat Raj

?CASES REFERRED :

[1] 1998 AIR SCW 3345

2 2005(8) S.C.C. 264

3 AIR 1985 S.C. 1147

4 2005 AIR SCW 3727=(2005) 142 STC 1 = (2005) 6 SCC 499

5 AIR 1953 S.C. 357

6 2006(9) SCALE 390

7 AIR 1977 S.C. 898

8 AIR 1989 S.C. 2113

9 1985(4) SCC 337

10 2002(4) ALT 661 (DB)

11 2004(5) ALT 563

12 2005(2) ALT 274

13 AIR 1994 S.C. 1558

14 (2000) 10 SCC 482

15 2005(1) ALT 552 (DB) = 2005(1) ALD 657

16 AIR 1950 S.C. 163

[17] **AIR 1954 S.C. 207**
[18] **AIR 1958 S.C. 86**
[19] **AIR 1961 S.C. 1506**

[20] **AIR 1961 S.C. 372**
[21] **2002(4) ALD 660 (DB) = 2002(6) ALD 18**
[22] **2006(2) ALT 76**
[23] **2006(8) SCJ 907**
[24] **1995(1) ALT 853**

HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.Nos.15399, 16824, 17533, 17778, 18346, 18671 & 21931 of 2006

Date : 24-1-2007

Between:

Yarlagadda Venkateswara Rao
S/o.Y.Venkata Krishnaiah ..
Petitioner

And

Government of Andhra Pradesh,
Represented by its Principal Secretary,
Panchayat Raj Department,
Secretariat Buildings,
Hyderabad and others ..
Respondents

HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.Nos.15399, 16824, 17533, 17778, 18346, 18671 & 21931 of 2006

COMMON ORDER:

Introduction :

1. Manipulative politics can be said to be one of the serious ills with which Indian Democracy suffers. Ours is a multi-party Democracy. Political parties play a vital role in the elections. Party Whips, violation thereof and consequential disqualification resulting therefrom, these questions do arise before the Courts quite often. It is true that when the people had given mandate in favour of a particular political party, be that in local body elections or even otherwise and when the elections are conducted on Party basis, except Independent candidates, elected representatives are bound to obey the Party Whip. There cannot be any doubt or controversy or two opinions over the same. Democratic spirit in the working of these Democratic Institutions also to be kept in mind while deciding such matters. The opinion is almost uniform that such manipulative politics would be of serious blow to the healthy Democracy and may have to be deprecated. Equally the procedural safeguards given to such elected candidates in relation to disqualifications or otherwise by

the relevant statutory provisions or the rules also may have to be observed in proper perspective to be in consonance with the spirit of the Democracy. A careful balance may have to be maintained in between these two.

2. These batch of Writ Petitions are filed by the candidates who are disqualified for the alleged violation of the Party Whip. Several procedural infirmities, violations and contraventions had been pointed out in the respective pleadings of the parties. The consequential order, G.O.Ms.No.321, dated 14-8-2006, was challenged in W.P.No.17778/2006. Inasmuch as substantially though the facts are slightly dissimilar, the questions involved being the same in all these Writ Petitions, these Writ Petitions are being disposed of by this Common Order.

3. **<u>Reliefs prayed for in the Writ Petitions:</u>**

W.P.No.15399/2006 is filed for a writ of mandamus, declaring the order of 4th respondent in Rc.No.171/A/06 dated 21-7-2006 as illegal, null, void, arbitrary and opposed to principles of natural justice and to pass such other suitable orders.

W.P.No.17533/2006 is filed for a writ of certiorari calling for the records of the 1st respondent in Order No.A1/165/06 dated 9-8-2006 and to quash the same as arbitrary, illegal, without jurisdiction and violative

of principles of natural justice in the interest of justice and equity and to pass such other suitable orders.

W.P.No.18346/2006 is filed for a writ of mandamus setting aside the impugned order R.C.No.1/2006 dated 14-8-2006 of the 1st respondent as illegal, arbitrary and violative of Articles 14 and 21 of the Constitution of India apart from being violative of principles of natural justice and to pass such other suitable orders.

W.P.No.18671/2006 is filed for a writ of mandamus declaring the action of the respondents in not allowing the 1st petitioner to function as Mandal Parishad President (MPP) of Tirumalayapalem Mandal, Khammam District and cancelling the other petitioners as M.P.T.Cs. vide order No.120/Elections/06 dated 7-8-2006 as illegal, unjust, arbitrary, discriminatory, violative of the fundamental rights guaranteed under Article 14 of the Constitution of India and also contrary to the provisions of A.P. Panchayat Raj Act and the Rules made thereunder, particularly with reference to Section 153 and the Rules issued in G.O.Ms.No.173 dated 10-5-2006 and consequently direct the respondents to declare the 1st petitioner as the elected President, Mandal President, Tirumalayapalem Mandal, Khammam District by setting aside the order of the 5th respondent dated 7-8-2006

without reference to the pendency of I.A.No.1544/2006 in E.P.No.971/2006 on the file of Election Tribunal-cum-Principal District Judge, Khammam District and to pass such other suitable orders.

W.P.No.21931/2006 is filed for a writ of mandamus declaring the action of the respondents in cancelling the election of petitioner as Member, M.P.T.C. through the impugned order dated 7-8-2006 in proceedings No.120/Elections/06, as illegal, arbitrary, discriminatory, violative of fundamental rights guaranteed under Article 14 of the Constitution of India and also contrary to the provisions of A.P. Panchayat Raj Act and the Rules made thereunder, particularly with reference to Section 153 and the Rules issued in G.O.Ms.No.173, dated 10-5-2006 and consequently to set aside the same and to pass such other suitable orders.

W.P.No.16824/2006 is filed for a writ of mandamus or any other appropriate writ declaring the proceedings in Rc.No.42/2006-B dated 3-8-2006 on the file of 4th respondent in which the petitioners are disqualified from holding the posts of Members of M.P.T.Cs. of Phirangipuram-IV Mandal Parishad, Guntur District as illegal, void, arbitrary and in violation of principles of natural justice and consequently to set aside the same and to pass such other suitable orders.

W.P.No.17778/2006 is filed by K.Vijayarani who is the 1st petitioner in W.P.No.16824/2006, praying for a writ of mandamus declaring G.O.Ms.No.321 dated 14-8-2006, Panchayat Raj & Rural Development issued by the 1st respondent as illegal, void and arbitrary and consequently to set aside the same and to pass such other suitable orders. It is needless to say that the said G.O. is consequential to the orders which had been impugned in W.P.No.16824/2006.

4. <u>Interim reliefs granted by this Court :</u>

<u>W.P.M.P.No.19179/2006 in W.P.No.15399/2006 :</u>

"Heard the Counsel.

On 30-8-2006 while issuing Rule Nisi, after hearing both sides and in view of the fact that several questions may have to be heard at length, status quo obtaining as on today to be maintained for a period of two weeks had been granted and subsequent thereto, the same is being extended.

In the light of the facts and circumstances explained in detail and also in the light of the stand taken by the respondents, this Court is of the considered opinion that the order of status quo already granted to be modified, and accordingly the operation of the order of the 4th respondent bearing No.171/A/06, dated 21-7-2006 is suspended until further orders."

<u>W.P.M.P.No.21970/2006 in W.P.No.17533/2006 :</u>

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"Heard the Counsel.

On 30-8-2006 while issuing Rule Nisi, after hearing both sides and in view of the fact that several questions may have to be heard at length, status quo obtaining as on today to be maintained for a period of two weeks had been granted and subsequent thereto, the same is being extended.

In the light of the facts and circumstances explained in detail and also in the light of the stand taken by the respondents, this Court is of the considered opinion that the order of status quo already granted to be modified, and accordingly the operation of the order of the 4th respondent bearing No.A1/165/06, dated 9-8-2006 is suspended until further orders."

W.P.M.P.No.21082/2006 in W.P.No.16824/2006 :

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"Heard the Counsel.

On 30-8-2006 this Court issued Rule Nisi. After hearing both sides and in view of the fact that several questions may have to be heard at length, on 11-9-2006 status quo obtaining as on today to be maintained for a period of two weeks had been granted and subsequent thereto, the same is being extended.

It is stated that in W.P.M.P.No.23138 of 2006, suspension of operation of G.O.Ms.No.321, dated 14-8-2006 was prayed for. It is also stated that Writ Petition No.17778 of 2006 is pending, wherein G.O.Ms.No.321, dated 14-8-2006 was challenged.

In the light of the facts and circumstances explained in detail and also in the light of the stand taken by the respondents, this Court is of the

considered opinion that the order of status quo already granted to be modified, and accordingly the operation of the proceedings of the 4th respondent in RC.No.42/2006-B, dated 3-8-2006 is suspended until further orders."

W.P.M.P.No.23056/2006 in W.P.No.18346/2006 :

"Heard the Counsel.

On 7-9-2006 while issuing Rule Nisi, after hearing both sides and in view of the fact that several questions may have to be heard at length, status quo obtaining as on today to be maintained for a period of two weeks had been granted and subsequent thereto, the same is being extended.

In the light of the facts and circumstances explained in detail and also in the light of the stand taken by the respondents, this Court is of the considered opinion that the order of status quo already granted to be modified, and accordingly the operation of the order of the 1st respondent bearing RC.No.1/2006, dated 14-8-2006 is suspended until further orders."

W.P.M.P.No.23481/2006 in W.P.No.18671/2006 :

"Heard the Counsel.

On 11-9-2006 while issuing Rule Nisi, after hearing both sides and in view of the fact that several questions may have to be heard at length, status quo obtaining as on today to be maintained for a period of two weeks had been granted and subsequent thereto, the same is being extended.

In the light of the facts and circumstances

explained in detail and also in the light of the stand taken by the respondents, this Court is of the considered opinion that the order of status quo already granted to be modified, and accordingly the operation of the order of the 5th respondent bearing No.120/Elections/06, dated 7-8-2006 is suspended until further orders."

W.P.No.17778/2006 :

"Heard the Counsel.

On 30-8-2006 while issuing Rule Nisi, after hearing both sides and in view of the fact that several questions may have to be heard at length, status quo obtaining as on today to be maintained for a period of two weeks had been granted and subsequent thereto, the same is being extended.

In the light of the facts and circumstances explained in detail and also in the light of the stand taken by the respondents, this Court is of the considered opinion that the order of status quo already granted to be modified, and accordingly the operation of the order of the 1st respondent in G.O.Ms.No.321, Panchayat Raj and Rural Development (MDL.II.4) Department, dated 14-8-2006 is suspended until further orders."

W.P.M.P.No.27812 /2006 in W.P.No.21931/2006 :

In view of the facts and circumstances well explained and also in the light of the orders already made by this Court in similar matters, interim suspension until further orders.

List the matter along with W.P.No.18671 of

2006.”

5. In the light of the interim orders made by this Court, it is stated that the writ petitioners are continuing in office by virtue of the aforesaid interim orders.

6. Vacate applications are moved in the Writ Petitions to vacate the interim orders. At the stage of hearing of the vacate applications all the Counsel on record made a request to dispose of the Writ Petitions finally and hence the Writ Petitions are being disposed of finally.

7. <u>Contentions of the Counsel on record:</u>

<u>Submissions of Sri R.V. Chalapathi</u> : Sri R.V. Chalapathi, the learned Counsel representing the writ petitioner in W.P.No.15399/2006 had taken this Court through the impugned order and the contents thereof and had pointed out that even on a prima facie reading of the impugned order the same is not a speaking order and the explanations submitted had not been considered in proper perspective and there was no offer of notice and there was never rejection of the offer and inasmuch as there was no refusal of any Party Whip whatsoever, the impugned order cannot be sustained. The learned Counsel also had taken this Court through the respective pleadings of the parties in elaboration and had explained

the scope and ambit of Section 153-A of A.P. Panchayat Raj Act, 1994 (hereinafter in short referred to as “Act” for the purpose of convenience) and would maintain that in the light of language of the said provision, the same cannot be said to be an effective alternative remedy. The learned Counsel also would point out that even otherwise the impugned order was not made under the relevant provision so as to attract Section 153-A of the Act. The Counsel while making further elaborate submissions had pointed out that this being a question of disqualification, the procedural requirements are to be strictly followed and there was no actual service of notice and the statement made relating to refusal is a false statement and even if the time noted in the impugned order to be taken as true, the same is in contravention of the Rules governing the field. The learned Counsel also in elaboration had pointed out to the different Rules in A.P. Conduct of Election of Member (co-opted), President, and vice-President of Mandal Parishad and Member (co-opted), Chairperson and Vice-Chairperson of Zilla Parishad Rules, 2006, (G.O.Ms.No.173, Panchayat Raj and Rural Development (Election and Rules), dated 10-5-2006), hereinafter in short referred to as “Rules” for the purpose of convenience, and would maintain that in the light of these serious legal infirmities, the preliminary objection

relating to the maintainability of the Writ Petition needs no serious consideration and inasmuch as this Court being a Constitutional Court, if this Court is satisfied about the procedural infirmities, the impugned order may have to be set aside. The learned Counsel also placed strong reliance on certain decisions.

Submissions of Sri V.Tulasi Reddy: Sri V.Tulasi Reddy, the learned Counsel representing the writ petitioner in W.P.No.17533/2006 would submit that the show cause notice itself is defective inasmuch as the same had been given under wrong provision of law and when the show cause notice itself is defective there is no question of sustaining the impugned order and the impugned order to be quashed and if need be opportunity to be given to the competent authority to make an order in accordance with law after issuing proper show cause notice. The learned Counsel also had further explained the scope and ambit of the Rules and the contravention thereof. The Counsel also placed reliance on certain decisions.

Submissions of Sri Venkata Rangadas Kanuri : Sri Venkata Rangadas Kanuri representing the petitioner in W.P.No.18346/2006 had taken this Court through the respective pleadings of the parties and would submit that the impugned order is in violation of the Rules and there are several procedural infirmities or irregularities.

Submissions of Sri K.R. Prabhakar : Sri K.R. Prabhakar, the learned Counsel representing the writ petitioners in W.P.No.18671/2006 would maintain that no doubt the Constitutional validity of Section 153-A of the Act had not been questioned and the provision though prima facie appears to be more or less an alternative remedy the same is not an effective remedy and even otherwise alternative remedy is not a bar to entertain the Writ Petition. The learned Counsel also would contend that the District Court is not conferred with the power to grant interim orders since the provision is silent. The Counsel also had explained the show cause notice, explanation and the impugned order and had pointed out to the absence of particulars in the minutes of the meeting and would submit that it is a non-speaking order and further pointed out certain other legal infirmities.

Submissions of Sri V.Brahmaiah Chowdary : Sri V.Brahmaiah Chowdary, the learned Counsel representing the writ petitioner in W.P.No.21931/2006 had substantially adopted the submissions made by the other learned Counsel and would comment that the preliminary objection raised relating to the maintainability of the Writ Petition on the ground of alternative remedy cannot be sustained in the light of several decisions of the Apex Court.

Submissions of Sri V.R. Avula : Sri V.R. Avula, the learned Counsel representing the writ petitioners in W.P.No.16824/2006 and the writ petitioner in W.P.No.17778/2006 who is the 1st writ petitioner in W.P.No.16824/2006, while making elaborate submissions would submit that both these Writ Petitions are connected and though a remedy is made available under Section 153-A of the Act, it is not an alternative or effective remedy and the circumstances are very peculiar and there is legal malice or personal malice and the Counsel also explained the present Rules and the prior Rules and would submit that the very decision making process is defective and suffers from legal infirmity since the making of a speaking order is mandatory and by virtue of these procedural infirmities or deviations, the writ petitioners need not be driven to the alternative remedy. The learned Counsel pointed out to several factual infirmities and contradictory and conflicting versions of the Chief Whip and the Presiding Officer and would maintain that the G.O. which had been questioned before this Court in the subsequent Writ Petition i.e., W.P.No.17778/2006, cannot be questioned by invoking the remedy under Section 153-A of the Act and hence in the light of the same the Writ Petitions are to be allowed. The Counsel placed strong reliance on several decisions to substantiate his

submissions.

Submissions of Sri V.V. Prabhakar Rao : Sri V.V. Prabhakar Rao raised preliminary objection relating to the maintainability of these Writ Petitions on the ground that there is an effective alternative remedy in such matters by virtue of the introduction of Section 153-A and Section 181-A by Act No.22 of 2006 and inasmuch as there is an effective alternative remedy by invoking the jurisdiction of the concerned District Court over the area in question, these Writ Petitions are not maintainable. The learned Counsel while elaborating his submissions had explained the object with which these provisions were introduced in pursuance of certain observations made by the Division Bench of this Court and would submit that in the light of the Constitutional scheme under Article 243-F of the Constitution and also in the light of the statutory scheme as specified by different provisions under the Act and the Rules framed thereunder, inasmuch as the concerned District Court is competent to adjudicate the disputes arising out of such disqualifications, the Writ Petitions may have to be thrown out on the preliminary ground. The learned Counsel also had pointed out to the old Rules and the present Rules and the difference in the language and also would maintain that several of the Judgments cited are in the context of old Rules and not the present Rules

and at any rate inasmuch as several factual controversies are involved in these matters, it would not be just and proper for the Writ Court to go into these factual controversies which had been elaborated in the respective pleadings of the parties since the adduction of some evidence may be necessary and in view of the same it would be just and proper to drive the writ petitioners to the appropriate forum. The learned Counsel in all fairness would submit that the procedure to be followed by the District Court even if a proceeding to be decided under Section 153-A may be the same procedure which may have to be followed by the District Court in general and the power to grant interim orders though not specifically specified in the said provision Section 153-A or Section 181-A as the case may be, such powers are implied powers and when there is a right there must be a remedy and when the remedy is provided the remedy to be an effective remedy and inasmuch as the District Court concerned is conferred with jurisdiction to entertain such proceeding, it is to be taken that the concerned District Court also is having jurisdiction to pass appropriate interim orders depending upon the facts and circumstances of a particular given case.

Submissions of Sri Y.S. Sai Prasad : Sri Y.S. Sai Prasad, the learned Counsel representing the vacate

petitioner/5th respondent in W.P.No.15399/2006 had taken this Court through the specific stand taken in the counter affidavit and would submit that in the light of the same it is clear that the writ petitioner had violated the Party Whip and hence the disqualification is in accordance with law. The learned Counsel pointed out certain factual aspects and would submit that the mere fact that some person had attested the alleged refusal by itself may not be a suspicious ground in the facts and circumstances of the case.

Submissions of Sri V.Ravinder Rao : Sri V.Ravinder Rao, the learned Counsel representing the contesting respondent No.7 in W.P.No.18671/2006 would submit that in the light of the clear law laid down by the Apex Court, inasmuch as ordinary procedure to be followed even be forum created under Section 153-A of the Act, it would be just and proper for the writ petitioners to approach the said proper forum. The Counsel made elaborate submissions on the aspect of alternative remedy and also on the aspect of effective remedy available having been conferred with specific jurisdiction to entertain the disputes of this nature by the District Court under Section 153-A of the Act.

Submissions of Sri Kowturi Vinay Kumar : Sri Kowturi Vinay Kumar, the learned Counsel representing the

contesting respondent No.6 in W.P.No.18671/2006 had explained the contents of the implead applications and under what ground and under what circumstances the disqualification had been incurred and would submit that the alleged violations of the Whip and the Presiding Officer, as the case may be, being factual controversies, the concerned District Court alone would be the proper forum.

Submissions of Sri Jagan Mohan Reddy : Sri Jagan Mohan Reddy, the learned Counsel representing the contesting respondents while making elaborate submissions virtually adopted the stand taken by Sri V.V. Prabhakar Rao on the maintainability of the Writ Petitions and also had explained the factual controversies between the parties and would maintain that in the peculiar facts and circumstances it would be just and proper to drive these writ petitioners to the respective District Courts giving liberty to raise all these grounds in the appropriate proceedings if they are so advised.

Submissions of Government Pleader for Panchayat Raj : The learned Government Pleader for Panchayat Raj virtually adopted the elaborate submissions made by Sri V.V. Prabhakar Rao and would submit that the Writ Petitions are to be dismissed summarily on the ground of effective alternative remedy being available to the

respective writ petitioners.

8. <u>Preliminary objection raised relating to the maintainability of the Writ Petitions :</u>

In all these Writ Petitions, except in W.P.No.17778/2006, the orders made are disqualification orders on the ground of violation of the Party Whips and G.O.Ms.No.321 which had been impugned in the said Writ Petition, is only a consequential order.

The maintainability of these Writ Petitions is being questioned on the principal ground that there is an effective alternative remedy provided under the Act and hence the Writ Petitions are to be thrown out on that ground. Section 153-A of the Act dealing with **Resolution of disputes relating to cessation for disobedience of Party Whip** reads as hereunder :

> "Where a member against whom a proceeding that he ceased to hold office as a consequence of the disobedience of the Party Whip is issued in pursuance of the second proviso to sub-section (1) of Section 153 and the affected member disputes the correctness of the proceedings, he may apply to the District Court having jurisdiction over the area in which the office of the Mandal Parishad is situated, for a decision."

The proviso to Section 153 of the Act, added by Act 5 of 1995, specifies :

> "Provided further that a member voting under this

sub-section in disobedience of the Party Whip shall cease to hold office in the manner prescribed and the vacancy caused by such cessation shall be filled as a casual vacancy."

Rules under G.O.Ms.No.173, Panchayat Raj & Rural Development, Department, dated 10-5-2006 were made in exercise of powers conferred by Section 268 r/w. clause (v) of sub-section (1) of Section 149, Section 153, clause (v) of sub-section (3) of Section 177 and Section 181 of the Act and in supercession of the rules issued in G.O.Ms.No.756, Panchayat Raj, Rural Development and Relief (Elections-III) Department dated 30-11-1994 as amended from time to time. Rule 3 of the Rules deals with **Convening of special meeting for election of Member (co-opted) Mandal Parishad.** Rule 4 of the Rules deals with **Quorum for election of member (co-opted), Mandal Parishad.** Rules 5, 6 and 7 also deal with certain aspects relating to the Member (co-opted) Mandal Parishad. Rule 8 of the Rules dealing with **Convening of special meeting for election of President and Vice-President** reads as hereunder :

(1) On the same day on which the special meeting for election of a Member (Co-opted) of Mandal Parishad is held and soon after the election of the member is over, a special meeting shall also be held by the Gazetted Officer authorized by the District Collector under sub-rule (1) of Rule 3 in the

office of the Mandal Parishad at the hour to be announced under sub-rule (8) of Rule 5, for the election of President and Vice-President in the manner hereafter laid down.

(2) Notice of the date and hour of such meeting shall be given in Form II to the members specified in clauses (i) to (iv) of sub-section (1) of Section 149 atleast three clear days in advance of the date of the meeting fixed for the election of the President and Vice-President, Mandal Parishad by the Gazetted Officer authorized by the District Collector under sub-rule (1) of Rule 3. In respect of Member (Co-opted), the notice in Form-IV shall be affixed on the notice board of the Mandal Parishad.

(3) If, for any reason, the election of the President or Vice President is not held on the date fixed as aforesaid, the meeting of the election of the President or Vice-President shall be held on the next day, whether or not it is a holiday observed by the Mandal Parishad and whether the President or Vice-President could not be elected on the next day also, the matter shall be reported to State Election Commission for fixing another date for holding election.

Rule 9 deals with **Quorum for election of President and Vice-President.** Rule 10 deals with **Manner of Election (President and Vice-President, Mandal Parishad).** Rule 11 deals with Disqualification for disobedience of Party Whip (Mandal Parishad) and the said rule reads as hereunder :

(1) Every recognized political Party may appoint on

behalf of that political Party a Whip and intimation of such appointment shall be sent by the State President or a person authorized by him under his signature and seal and such intimation shall be sent to the Presiding Officer, so as to reach him on or before 11.00 A.M. on the day preceding the day of election to the office of the President or Vice-President of the Mandal Parishad.

(2) The person appointed as Whip by the recognized political Party shall, in addition to a copy of the contents of the Whip issued by him, to the Presiding Officer at least an hour before the commencement of special meeting.

(3) The person appointed as Whip by a recognized political Party shall, in addition to a copy of the contents of the Whip issued by him, also furnish a copy of the acknowledgement obtained from the members belonging to the Party on the service of the Whip to them, to the Presiding Officer before the commencement of the meeting. If any member elected on behalf of the recognized political Party refuses to receive the Whip issued by him, he shall record the same and furnish a copy of it to the Presiding Officer.

(4) Any member of the Mandal Parishad elected, on behalf of a recognized political Party shall cease to be a Member of the Mandal Parishad for disobeying the directions of the Party Whip so issued, in the manner hereinafter provided.

(5) The Presiding Officer shall, on receipt of a written report from the Party Whip within three days of the election that a member belonging to his Party has disobeyed the Whip issued in connection with the election, give a show cause notice to the

member concerned as to why he should not be declared to have ceased to hold office and that he should make any representation within seven days from the date of the notice. The Presiding Officer shall consider any explanation given and pass a speaking order in the matter of cessation for disobedience of the Whip. If no explanation is received the Presiding Officer shall pass an order on the basis of the material available with him.

9. Submissions at length were made by the Counsel on record relating to Section 153-A of the Act and also incidentally relating to Section 181-A of the Act also and the Rules referred to supra and in the light of the statutory scheme inasmuch as an effective alternative remedy is provided for, the Writ Petitions are not maintainable.

10. In **Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and others** [1] the Apex Court at paras 20 and 21 observed :

"Much water has since flown beneath the bridge, but there has been no corrosive effect on these decisions which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a Writ Petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specifically in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction

without any legal foundation.

That being so, the High Court was not justified in dismissing the Writ Petition at the initial stage without examining the contention that the show cause notice issued to the appellant was wholly without jurisdiction and that the Registrar, in the circumstances of the case, was not justified in acting as the “TRIBUNAL”.

11. In **U.P. State Spinning Co. Ltd. Vs. R.S. Pandey and another** [2] the Apex Court observed that when the High Court had entertained a Writ Petition notwithstanding the existence of alternative remedy the Supreme Court while dealing with the matter in an appeal should not permit the question to be raised unless the High Court’s reasoning for entertaining the Writ Petition is found to be palpably unsound and irrational. In **Ram and Shyam Company Vs. State of Haryana and others** [3] the Apex Court at para-9 observed :

“Before we deal with the larger issue, let me put out of the way the contention that found favour with the High Court in rejecting the Writ Petition. The learned single Judge as well as the Division Bench recalling the observations of this Court in Assistant Collector of Central Excise Vs. Jainson Hosiery Industries (1979) 4 SCC 22 : (AIR 1979 S.C. 1889) rejected the Writ Petition observing that ‘the petitioner who invokes the extraordinary jurisdiction of the Court under Article 226 of the Constitution

must have exhausted the normal statutory remedies available to him. We remain unimpressed. Ordinarily it is true that the Court has imposed a restraint in its own wisdom on its exercise of jurisdiction under Article 226 where the Party invoking the jurisdiction has an effective, adequate alternative remedy. More often, it has been expressly stated that the rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than rule of law. At any rate it does not oust the jurisdiction of the Court. In fact in the very decision relied upon by the High Court in The State of Uttar Pradesh v. Mohammad Nooh 1958 SCR 595 : (AIR 1958 SC 86) it is observed 'that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy'. It should be made specifically clear that where the order complained against is alleged to be illegal or invalid as being contrary to law, a petition at the instance of person adversely affected by it, would lie to the High Court under Article 226 and such a petition cannot be rejected on the ground that an appeal lies to the higher officer of the State Government. An appeal in all cases cannot be said to provide in all situations an alternative effective remedy keeping aside the nice distinction between jurisdiction and merits. Look at the fact situation in this case. Power was exercised formally by the authority set up under the Rules to grant contract but effectively and for all practical purposes by the Chief Minister of the State. To whom do you appeal in a State administration against the decision of the Chief Minister ? The cliché of appeal from Caesar

to Caesar's wife can only be bettered by appeal from one's own order to oneself. Therefore this is a case in which the High Court was not at all justified in throwing out the petition on the untenable ground that the appellant had an effective alternative remedy. The High Court did not pose to itself the question, who would grant relief when the impugned order is passed at the instance of the Chief Minister of the State. To whom did the High Court want the appeal by the filed over the decision of the Chief Minister ? There was no answer and that by itself without anything more would be sufficient to set aside the judgment of the High Court."

12. Reliance also was placed on **State of H.P. and others Vs. Gujarat Ambuja Cement Ltd. and another** [4] whereunder the aspect of alternative remedy and the doctrine of exhaustion of the statutory remedy and the exceptions thereto had been dealt with. Strong reliance was placed on **N.S. Thread Co. Vs. James Chadwick & Bros.** [5] wherein the Apex Court at para-7 observed :

"Section 76(1) provides:

"Save as otherwise expressly provided in the Act an appeal shall lie, within the period prescribed by the Central Government, from any decision of the Registrar under this Act or the rules made thereunder to the High Court having the jurisdiction."

The Trade Marks Act does not provide or lay down any procedure for the future conduct or career of that appeal in the High Court, indeed Section 77 of the Act provides that the High Court can if it likes make rules in the matter. Obviously after the appeal had reached the High Court it has to be determined according to the rules of practice and procedure of that Court and in accordance with the provisions of the charter under which that Court is constituted and which confers on it power in respect to the method and manner of exercising that jurisdiction. The rule is well settled that when a statute directs that an appeal shall lie to a Court already established, then that appeal must be regulated by the practice and procedure of that Court. This rule was very succinctly stated by Viscount Haldane L.C. in "National Telephone Co. Ltd. Vs. Postmaster-General (1913) A.C. 546(A) in these terms:

"When a question is stated to be referred to an established Court without more, it in Municipality opinion, imports that the ordinary incidents of the procedure of that Court are to attach and also that any general right of appeal from its decision likewise attaches."

The same view was expressed by their Lordships of the Privy Council in 'Adaikappa Chettiar Vs. Chandrasekhara Thevar – AIR 1948 P.C. 12 (B), wherein it was said :

"Where a legal right is in dispute and the ordinary Courts of the country are seized of such dispute the Courts are governed by the ordinary rules of procedure applicable thereto and an appeal lies if authorized by such rules, notwithstanding that the

legal right claimed arises under a special statute which does not, in terms confer a right of appeal."

Again in 'Secy. of State of India Vs. Chellikani Rama Rao – AIR 1916 P.C. 21 (C), when dealing with the case under the Madras Forest Act their Lordships observed as follows :

"It was contended on behalf of the appellant that all further proceedings in Courts in India or by way of appeal were incompetent, these being excluded by the terms of the statute just quoted. In their Lordships' opinion this objection is not well-founded. Their view is that when proceedings of this character reach the District Court, that Court is appealed to as one of the ordinary Courts of the country with regard to whose procedure, orders and decrees the ordinary rules of the Civil Procedure Code apply."

Though the facts of the cases laying down the above rule were not exactly similar to the facts of the present case, the principle enunciated therein is one of general application and has an apposite application to the facts and circumstances of the present case. Section 76, Trade Marks Act confers a right of appeal to the High Court and says nothing more about it. That being so, the High Court being seized as such of the appellate jurisdiction conferred by Section 76 it has to exercise that jurisdiction in the same manner as it exercises its other appellate jurisdiction and when such jurisdiction is exercised by a single Judge, his judgment becomes subject to appeal under Cl.15 of the Letters Patent there being nothing to the contrary in the Trade Marks Act."

13. In **Star Paper Mills Vs. State of U.P.** [6] it was observed by the Apex Court as hereunder :

> "Article 226 of the Constitution of India confers on all the High Courts a very wide power in the matter of issuing writs. However, the remedy of writ is an absolute discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved Party can have an adequate or suitable relief elsewhere. The Court in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of natural justice or procedure required for decision has not been adopted."

14. In **Shamalbhai Vs. Addl.S.L.A. Officer** [7] it was held that the extraordinary jurisdiction of the High Court not to be exercised when the case involves determination of disputed questions of fact or when the petitioner is having an alternative remedy. Reliance also was placed on **Maganlal Vs. M/s.Jaiswal Industries** [8], **Savitri Vs. Govind Singh Rawat** [9], **Madhava Rao Desai Vs. Union of India** [10] and **Akula Ganga Raju and another Vs. Presiding Officer, Yeleswaram Mandal Praja Parishad and others** [11]. In **Chavva Reddy Saraswatamma Vs. Presiding Officer-cum-Election Officer/Nodal Officer** [12] while dealing with

disobedience of a Party Whip and the Member of Mandal Parishad having declared as ceased to hold such office, it was held that the Writ Petition filed by such disqualified member is maintainable. The aspect of defection and a Member of Legislature declared disqualified on that ground and the finality thereof and the scope and ambit of judicial review and permissibility on ground of violation of procedural rules had been dealt with in elaboration in **Ravi S.Naik Vs. Union of India** [13]**.** Reliance also was placed on **Union of India and another Vs. State of Haryana and another** [14]**.** In **M.Anandamma and others Vs. Revenue Divisional Officer/Presiding Officer, Kurnool and others** [15]**,** a Division Bench of this Court at paras 52 and 53 observed :

> "The scope of enquiry is very limited and an elaborate enquiry as held in M.Mohan Rao's case (1998(5) ALT 323 (DB) is not contemplated. It is a summary enquiry. The Presiding Officer is, therefore, not entitled to adjudicate and resolve any serious dispute that may arise between the Party Whip and the members unlike the authority as provided for under Section 22 of the Act to resolve the disputes about the disqualification of a member under Sections 17, 18, 19 and 20 of the Act. The Rule, therefore, does not suffer from any Constitutional infirmity.
>
> We are in agreement with the submission made

by the learned Counsel for the petitioners that there is a need to create and constitute an authority for resolution of the disputes, if any, arising out of the allegations of disqualification of a member of a Mandal Parishad for disobeying the directions of the Party Whip. We cannot issue any direction to the Legislature to make any law in this regard. We can only invite the attention of the Executive as to the need of creating and constituting a Forum for resolution of the disputes and reminds its duty to take initiative to provide and make appropriate amendments to the provisions of the existing Act. It is for the Government to take appropriate measures in this regard."

15. In **Rashid Ahmed Vs. Municipal Board, Kairana** [16] it was held that the question of adequate legal remedy is a factor to be taken into consideration while granting writs. This view was followed in **K.S.Rashid and Son Vs. The Income-tax Investigation Commission** [17]. In **State of U.P. Vs. Mohammad Nooh** [18] it was observed that this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari had been issued in spite of the fact that the aggrieved Party had other adequate legal remedies. This view was considered by the Constitution

Bench in **A.V.Venkateswaran Vs. R.S. Wadhwani** [19] wherein it was observed at para-10 as hereunder :

> "The passages in the judgments of this Court we have extracted would indicate (1) that the two exceptions which the learned Solicitor-General formulated to the normal rule as to the effect of the existence of an adequate alternative remedy were by no means exhaustive, and (2) that even beyond them a discretion vested in the High Court to have entertained the petition and granted the petitioner relief notwithstanding the existence of an alternative remedy. We need only add that the broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the Court."

16. Another Constitution Bench also had explained the scope and ambit thereof in relation to writ of certiorari and prohibition in **Calcutta Discount Co. Vs. I.T. Officer** [20]**.** Strong reliance was placed on **S.Jyothi Vs. Presiding Officer/Election Officer** [21]**,** wherein the Division Bench while dealing with the Rules of 1994 in the

circumstances of the case held that the Writ Petition filed questioning the validity of the order disqualifying the petitioner on the ground of disobedience of Party Whip is maintainable. Reliance also was placed on **Sk.Abdul Saleem Vs. A.P. State Wakf Board** [22] wherein it was held that the alternative remedy of appeal under the Wakf Act is not a bar for entertaining the Writ Petition. In **M/s.Siemen Ltd. Vs. State of Maharashtra and others** [23] while dealing with the entertainment of a Writ Petition when a challenge is made in relation to a show cause notice it was held by the Apex Court that ordinarily writ court may not exercise its discretionary jurisdiction in entertaining the Writ Petition questioning show cause notice, unless the same appears to have been without jurisdiction, but however when the notice is issued with pre-meditation, the Writ Petition would be maintainable. Reliance also was placed on **Billa Ranga Reddy Vs. Revenue Divisional Officer/L.A.O., Peddapalli** [24].

17. In the light of the introduction of Section 153-A of the Act as already aforesaid, the question now to be considered is that in the light of the said remedy whether it is to be held that the same is operative as absolute bar to the maintainability of the Writ Petitions. This Court is of the considered opinion that in the light of the scope and

ambit of the judicial review and the powers of the Constitutional Courts under Articles 226 and 32 of the Constitution of India as well, the mere availability of an alternative remedy cannot be said to be a bar to the maintainability of a Writ Petition if the Constitutional Court is otherwise satisfied that in a particular given set of facts, the Writ Petition may have to be entertained and to be dealt with on its merits and demerits. Hence, the preliminary objection raised relating to the maintainability of the Writ Petitions may have to be answered in the negative, but however suffice to state that the writ petitioners are having a remedy by way of approaching the District Courts. No doubt certain submissions are made in relation to the aspect whether a G.O. can be questioned before the concerned District Court. It is needless to say that the same is only a consequential order.

18. <u>Facts of the cases :</u>

The brief facts and the respective stands taken by the parties in all these Batch of Writ Petitions are as hereunder:

Yarlagadda Venkateswara Rao, writ petitioner in **W.P.No.15399/2006** had questioned the order dated 21-7-2006 in Rc.No.171/A/06 made by the 4th respondent-

Presiding Officer of Mandal Parishad, Mandavalli, Krishna District and the Whip Ch.Akineedu was impleaded as a Party-5th respondent by virtue of order in W.P.M.P.No.19896/2006. It is stated that the petitioner had been elected as a Member of Mandal Parishad Territorial Constituency, in short 'M.P.T.C.', Mandavalli-I of Mandavalli Mandal, Krishna District in the recent elections from Indian National Congress along with seven others and the total number of members elected to MPTC are 15 in number in which one Independent Member got elected and six Telugu Desam Party Members were elected. The said elections were conducted by respondents 2 and 3 in Krishna District along with other Districts in Andhra Pradesh. It is also stated that the 4th respondent was appointed as Presiding Officer of the Mandal Parishad to elect co-opted Member, President and Vice-President and accordingly the 4th respondent issued a notice in Form-II dated 6-7-2006 to all the elected Members requesting them to attend the meeting on 11-7-2006 at 3 p.m. to elect the President and Vice-President of the Mandal and all the Members have assembled at 3 p.m. on the said day and the name of the petitioner was proposed for the post of President, Mandal Parishad by Kuna Srinivasa Rao of Telugu Desam Party and seconded by Lakshmipatula Veera Venkata Satyanarayana of the said Telugu Desam

Party and so also the name of Moru Subba Rao was proposed and seconded by other Members for the post of President, Mandal Parishad as required under the Rules and he was elected as President since majority Members raised hands in his favour i.e., 8 Members out of 15 Members, and the same was recorded in the Minutes Book of the Mandal Parishad, Mandavalli and also recorded in the video coverage as directed by the 2nd respondent-State Election Commission. It is also stated that the petitioner received a copy of the proceedings of the 4th respondent in Rc.No.171/A/06 dated 11-7-2006 stating that the 5th respondent herein who was impleaded as a Party Whip of Indian National Congress for the elections of President and Vice-President of Mandavalli Mandal Parishad had given an objection letter dated 11-7-2006 that the petitioner had not voted for Party candidate and contested as Independent against the Rules by enclosing the said letter of the Whip and calling for explanation within 7 days and the petitioner submitted explanation on 19-7-2006 stating that he was in his house at Mandavalli from the date of his election as MPTC Member i.e., from 28-6-2006 and he had not gone anywhere beyond Mandavalli village and the 5th respondent who is claiming that he was appointed as

Whip of Indian National Congress Party had not offered Whip to him at any time and he had not refused the same and hence it is not correct to state that the petitioner had rejected the Whip. It is also stated that the M.P.D.O. in his Rc.No.309/2006A dated 17-7-2006 had sent a meeting notice also requesting the petitioner to attend the meeting on 22-7-2006 at 11.30 a.m. at Meeting Hall, Mandal Parishad Office for taking oath of the President and Vice-President. It is also stated that after receiving the said notice the petitioner was under the impression that action against the show cause notice dated 11-7-2006 was dropped by the 4th respondent. It is further stated that to his utter surprise the petitioner received an order of the 4th respondent passed in Rc.No.171/A/06 dated 21-7-2006 on the same day. The said order is impugned on several grounds specified in Grounds (a) to (i) of para-5 of the affidavit filed in support of the Writ Petition.

The 4th respondent filed W.V.M.P.No.1988/2006 and the 5th respondent who came on record filed W.V.M.P.No.1987/2006. Reply affidavits to the counter affidavits of respondents 4 and 5 also had been filed. The preliminary objection relating to the maintainability of the Writ Petition had been raised. The 4th had taken a specific stand that a special meeting was convened at 3

p.m. on 11-7-2006 for conduct of elections to the post of President and Vice-President of Mandal Parishad as per the Election schedule and the 5th respondent-Whip of Indian National Congress Party had submitted 8 acknowledgements obtained from the members belonging to their Party. As per the Party Whip the petitioner refused to receive orders of the Whip. As per the Party Whip all the members who were elected on behalf of Indian National Congress Party should vote for the post of President in favour of one Moru Subba Rao, but however the writ petitioner disobeyed the Party Whip and contested to the post of President with the support of other recognized political parties and also with the support of one member who was elected as Independent candidate. It is also stated that the 5th respondent had submitted a written complaint to the 4th respondent on 11-7-2006 requesting him to take appropriate action against the petitioner for disobedience of the Party Whip and a show cause notice was issued on 11-7-2006 giving seven days time and the writ petitioner submitted the explanation. The 4th respondent received the explanation on 19-7-2006 wherein it was stated that the said Whip was not offered to the petitioner. It is also stated that after perusal of the relevant records and also acknowledgements of the Whip

and also the endorsements of the Whip, the 4th respondent came to the conclusion that the petitioner disobeyed the Party Whip given by the Indian National Congress Party and hence issued the impugned proceedings.

In the counter affidavit filed by the 5th respondent virtually and substantially the same stand had been taken. It is stated in para-4 that the Indian National Congress Party had selected one Moru Subba Rao, MPTC member for the post of President, Mandal Praja Parishad and hence the 5th respondent issued a Whip to all the 8 Party members who were elected as MPTC members on the Indian National Congress Party ticket including the writ petitioner directing to be present and vote in favour of Moru Subba Rao in the special meeting to be held on 11-7-2006. It is further stated that the 5th respondent served the Whip on all the 8 members but the writ petitioner rejected to receive the same. The 5th respondent tried to serve the Whip on the writ petitioner on 11-7-2006 several times but he refused the same. The Whip was served on all the other MPTCs well prior to the time for filing of nominations i.e., by 9 a.m. itself. All other MPTCs of Indian National Congress Party had received the same and the same was recorded in the presence of

a witness by name N.Visweswara Rao and hence it is deemed service as per Rule 11(3) of the Rules and the writ petitioner cannot say that no Whip was served on him. The very fact that all the seven members of the Indian National Congress Party were present on 11-7-2006 and voted in favour of Moru Subba Rao in compliance of the Whip except the writ petitioner goes to show that the contention of the writ petitioner that he was not aware of the Whip and it was not served on him is false. It is also stated that the 5th respondent tried to give the served copies of the Whip and also the refusal by the petitioner to the Presiding Officer right from 1.30 p.m. on 11-7-2006 but the Presiding Officer was not available in the office of the Mandal Parishad, Mandavalli till 3 p.m. just before convening of the meeting. Further specific stand is taken that the writ petitioner defying the Whip colluded with Telugu Desam Party MPTC members and the independent candidate and contested for the post of President and thus violated the Whip and acted contrary to the interests of the Indian National Congress Party. Several factual details had been narrated in this regard and specific stand is taken in relation to alternative remedy and the Rules governing the field also had been referred to in detail.

In the reply affidavits filed, the allegations made in

the counter affidavits of respondents 4 and 5 had been specifically denied and several procedural violations and infirmities had been specifically pointed out by the writ petitioner.

In the affidavit filed in support of **W.P.No.17533/2006** it is stated that there is no candidate from the Indian National Congress Party for the post of Vice-President of Mandal Parishad Yedapally and the petitioner remained silent and had not exercised her vote in favour of any candidate and the minutes recorded by the 1st respondent in respect of the election of Vice-President amply confirms that the candidates who had contested for the post of Vice-President had not produced any authorization from the Party President in the State as contemplated under Rule 10(1) of the Rules. It is stated that in the said election the candidate set up by Telugu Desam Party had got elected. Specific stand is taken that during the process of election for the post of Vice-President no candidate had produced authorization from the President of Indian National Congress Party or a person duly authorized by the State President to contest for the post of Vice-President on behalf of the Indian National Congress Party on account which the petitioner understood that there was no candidate set up by the Indian National Congress Party for the post of Vice-President. It is also

stated that the petitioner was served a show cause notice in Lr.No.A1/165/2006 dated 18-7-2006 purporting to be made under G.O.Ms.No.172, P.R. & R.D. (Elections) Department dated 10-5-2006. It is also further stated that the petitioner was present in the special meeting on 11-7-2006 held for the election of President and Vice-President of Mandal Parishad Yedapally and the Indian National Congress Party State President had appointed Naidu Shankar as a Whip who had directed the petitioner to vote in favour of K.Suryanarayana Murthy who was elected from the Indian National Congress Party, M.P.T.C. Jaitapur Constituency to the post of Vice-President. It is further stated that a copy of the Whip had been handed over to the petitioner on 11-7-2006 and she had signed on the same, but in the elections to the post of Vice-President the petitioner had not supported the candidate of K.Suryanarayana Murthy and had not registered her vote, but kept quite. It is further stated that the same amounts to violating the Party Whip issued by Naidu Shankar and therefore the petitioner was called upon to submit explanation within a period of seven days as to why her Membership as Mandal Parishad Constituency Yedapally-I be ceased, failing which action will be taken on the basis of the available records. It is also stated that the petitioner submitted her explanation to the show cause notice on

25-7-2006 under acknowledgement stating that the show cause notice issued on the application of Shankar Naidu and the minutes recorded by the 1st respondent on 11-7-2006 are mutually contradictory, defective and not in accordance with law. It is also further stated that the Indian National Congress State/District President had not followed Rule 10(1) of the Rules. The minutes of the 1st respondent or any other documents furnished do not disclose that there was any candidate contesting on behalf of recognized Party and produced authorization to the Presiding Officer before 10 a.m. It is further stated that the Party Whip defendant 11-7-2006 does not disclose that the letter of the so called Whip is concocted one and whereas the show cause notice and other documents furnished if compared are contradictory to each other. Further, it is stated that the intimation by political Party about the persons appointed as Whip does not disclose that Naidu Shankar belongs to any Party or his designation in the Party and it also does not disclose the name of the recognized political Party without which he had been appointed as the Whip and as such the same is not tenable in Law. Further, in the said intimation the name of one Naidu Shankar C.D.C. Chairman was mentioned as the so-called Whip whereas in the Party Whip his name was mentioned as “Shankar Naidu” which

led to confusion about the identity of the person which also does not bar the Party seal and his designation in the Party. Therefore the same is not as per Law. The minutes of the Presiding Officer dated 11-7-2006 mentioned only the appointment of Whip which mentions the name of the Whip as “Shankar Naidu” M.P.T.C., but as per the intimation by political Party the name of the Whip was mentioned as “Shankar Naidu”, CDC, Chairman. The alleged candidate of K.Suryanarayana Murthy on behalf of Indian National Congress Party is illegal and untenable and therefore the petitioner requested the 1st respondent to drop further proceedings against her as the proposed action is not according to Law. It is further stated that without considering the explanation submitted by her in accordance with the Rules the 1st respondent passed the impugned order dated 9-8-2006 in order No.A1/165/06 purporting to cease the membership of the petitioner as per sub-rule (4) of Rule 11 of G.O.Ms.No.173 dated 10-5-2006. Several grounds are raised in para 10(a) to (f) of the affidavit filed in support of the Writ Petition. Specific ground is raised that G.O.Ms.No.173 dated 10-5-2006 is not applicable at all. There cannot be any doubt or controversy relating to this question.

The 1st respondent filed vacate application in

W.V.M.P.No.2282/2006 wherein the preliminary objection relating to the maintainability of the Writ Petition had been taken. Further specific stand is taken that the contention of the petitioner that no candidate had produced authorization from the President of Indian National Congress Party in the State or a person duly authorized by the State President to contest the post of Vice-President on behalf of the said Party and as such the petitioner understood that there was no candidate set up by the said Party for the post of Vice-President are not correct and they are untenable. It is specifically stated that the fact is that G.Gangadhar, President, District Congress Committee, Nizamabad who had been authorized to appoint Whip for all Mandal Parishads in Nizamabad by the President, A.P. Congress Committee had appointed Naidu Shanker, Chairman, C.D.C. Bodhan as the Whip for the Mandal Parishad, Yedpally. It is also stated that the said Naidu Shanker had issued Party Whip on 11-7-2006 to the following elected members of the Mandal Parishad, Yedpally belonging to Indian National Congress Party with a request to be present in the special meeting to be held on 11-7-2006 and to vote in favour of K.Suryanarayana Moorthy, the candidate proposed by the Indian National Congress Party for the election to the post of Vice-President, Mandal Parishad, Yedpally:

1) Jaya Joggari, MPTC Yedpalli-I
2) Srinivas A. MPTC Yedpalli-II
3) K.Suryanarayana Moorthy, MPTC Jaithapur
4) Smt.Narsavva V.MPTC Kurnapalli
5) Gaini Pochaiah, MPTC Jamlam.

It is further stated that all the above Members including the petitioner also had signed on a copy of the Whip in token of receipt of the Party's Whip and its contents. It is further stated that Naidu Shanker, the Whip of Indian National Congress Party had handed over the original copy of the Whip containing the signatures of all the above members to the Presiding Officer at 10 a.m. on 11-7-2006 itself and as such the contention of the petitioner that there was no elected member belonging to Indian National Congress Party who was authorized by the Party to contest for the post of Vice-President and on account of which she understood that there was no candidate set up by the Indian National Congress Party for the post of Vice-President is not correct and is not acceptable and the petitioner had been served with Party's Whip and she had acknowledged its receipt also. In para-8 of the counter affidavit it is stated that the contention of the petitioner that she remained silent and had not exercised her vote in favour of any candidate as there was no candidate from Indian National Congress Party for the post of Vice-President is not correct and tenable. The fact is that the

petitioner had been served with her Party's Whip on 11-7-2006 wherein all the elected members belonging to Indian National Congress Party had been requested to participate in the special meeting held on 11-7-2006 and to vote in favour of K.Suryanarayana Moorthy, the member candidate proposed to contest for the post of Vice-President on behalf of Indian National Congress Party. The petitioner had acknowledged the receipt of the said Whip and the said acknowledged original copy of the Whip was handed over to the Presiding Officer on 11-7-2006 at 10 a.m. and as such the petitioner cannot deny the fact of intimation made to her well in advance by serving a Whip on her to attend the special meeting on 11-7-2006 and to exercise her vote in favour of her Party's candidate K.Suryanarayana Moorthy for his election to the post of Vice-President. It is further stated that the contention of the petitioner that the minutes recorded by the 1st respondent confirms that the candidate who had contested for the post of Vice-President had not produced any authorization from the Party President in the State also is not correct and tenable. The fact in this regard is that it was clearly recorded in minutes at page No.20 of Minutes Register that a Whip in the name of Shanker Naidu on behalf of the State President, Indian National Congress Party had been submitted and thus the

petitioner had misrepresented the facts in the affidavit and tried to misled the Hon'ble Court. It is further stated that the way the petitioner acted during the special meeting held on 11-7-2006 for election of Vice-President reveals that she wantonly remained silent and had not exercised her vote by show of her hand even after observing the remaining members belonging to Indian National Congress Party raising their hands in favour of K.Suryanarayana Moorthy for his election to the post of Vice-President and the same paved easy way for election of the candidate set up by the Telugu Desam Party and it is proved beyond all doubts that the petitioner had indirectly and deliberately helped the Telugu Desam Party candidate to be elected as Vice-President of Mandal Parishad, Yedpally and thus the petitioner had willfully violated the Party Whip issued by Shanker Naidu who had been authorized by the State President, Indian National Congress Party to issue Whip to the elected members the said Party. The issuance of show cause notice to the petitioner had been specified and it was clarified that the said notice had been issued under G.O.Ms.No.173, dated 10-5-2006 and evidently in the light of the stand taken by the 1st respondent, it appears to be a mistake which had crept in the said show cause notice. Hence specific stand is taken that the impugned order is in accordance with

law.

The petitioner in **W.P.No.18346/2006** averred in para-2 of the affidavit filed in support of the Writ Petition that she had contested and was elected for the M.P.T.C. member of Panukuvalasa M.P.T.C. Pachipenta Mandal, Vizianagaram District on behalf of the Congress Party. As per Section 153 of the Act, the President and the Vice-President of the Mandal Parishad shall be elected by and from among the elected members specified in clause (i) of sub-section (1) of Section 149 of the Act by show of hands duly obeying the Party Whip given by such functionary of the recognized political Party as may be prescribed. It is stated that the total number of M.P.T.C. members of Pachipenta Mandal Parishad are 13. The elections for the President and Vice-President of Pachipenta Mandal Parishad was held on 11-7-2006 and a meeting was convened by 11 A.M. in the Mandal Parishad meeting hall for the oath and election of President and Vice-President of Mandal Parishad. For the said meeting all the 13 MPTC members attended and one co-option member was elected. The B-Form for the post of President on behalf of Congress Party was given to one Mr.Ijjada Tirupathi Rao. On behalf of our Party no Party Whip was issued and the petitioner had not received any Party Whip given by the functionary of the Congress

Party either to vote to any member for electing as President or Vice-President, but the 1st respondent without conducting the elections for the President and Vice-President postponed the election to 21-7-2006 without there being any proper reason. It is also further stated that on 21-7-2006 again the meeting was conveyed for electing the President and Vice-President of the Mandal Parishad, Pachipenta and even on that day no Party Whip was issued on behalf of the Congress Party to elect a particular member as President or Vice-President or to vote to a particular member for electing to the post of President or Vice-President. Surprisingly a B-Form was given by the Congress Party by declaring the name of the petitioner as President and one of the Congress Party MPTC Member proposed the petitioner's name as President and another MPTC member seconded her name. Since the petitioner was not interested to hold the post of Petitioner due to personal inconvenience and since she was not informed in advance and since no Party Whip was given by the functionary of the Congress Party, the petitioner refused to accept the proposal of her candidature as the President. Immediately after the refusal, again the name of Mr.Ijjada Tirupati Rao had been proposed and seconded by the MPTC members of the Congress Party. Subsequently one Pinninti Prasada

Babu of Telugu Desam Party was proposed and he was elected as the President of the Mandal Parishad and the petitioner also voted for him and also to Mr.G.Ramu for being elected as Vice-President. It is also further stated in para-5 that the 1st respondent issued a show cause notice in Rc.No.1/2006 dated 2-8-2006 directing the petitioner to explain the reason if any why she should not be declared to have seized to hold the office of MPTC Panukuvalasa of Pachipenta Mandal alleging the violation and disobedience of the Whip. The 1st respondent in collusion with Mr.Regu Maheswara Rao issued the show cause notice dated 2-8-2006 with false allegations. The petitioner submitted her explanation to the show cause notice dated 2-8-2006 issued by the 1st respondent and it is stated that the 1st respondent without considering the explanation of the petitioner issued the impugned order was made. Several grounds are raised in para-6(a) to 6(l).

The 1st respondent filed W.V.M.P.No.2231/2006 wherein the same preliminary objection relating to maintainability of the Writ Petition had been taken and virtually the same stand had been reiterated and it is stated in para-5 that as per the authorisation issued by the District Election Authority in response to the Election

Commission Notification, the 1st respondent proceeded to Pachipenta on 21-7-2006 and conducted election of the President and Vice-President of the Mandal Parishad. It is further stated that the total number of MPTC members of Pachipenta Mandal Parishad are 13; 6 members from Telugu Desam Party, 6 members from Congress-I Party and one Independent had been elected as MPTCs. As per Section 153 of the Act the President and Vice-President of the Mandal Parishad shall be elected by and from among the elected members specified in clause (i) of sub-section (1) of Section 149 of the Act by show of hands duly obeying the Party Whip given by the recognized political parties concerned. But Smt.Kirla Parvathi, elected as MPTC member from Congress-I Party affiliation, at the time of elections to the President and Vice-President, willfully and with a predetermined idea violated the Whip and voted in favour of Telugu Desam Party for the posts of President and Vice-President. It is further stated that originally the elections for the President and Vice-President of Pachipent Mandal Parishad were held on 11-7-2006 and a meeting was also conducted for the said posts at 11 A.M. The co-option member election was completed and subsequently while taking up the election to the post of President and Vice-President, lot of clashes between two political parties had arisen and law

and order situation was not conducive for holding election. Then the Presiding Officer, after informing the position to the District Election Authority and through District Election Authority to State Election Commission who in turn notified in Lr.No.1648/SEC.B1/2006 giving schedule to conduct election to the said Mandal Parishad on 21-7-2006 at 11 A.M. thus postponing the elections to 21-7-2006 without there being any proper reason as stated by the petitioner is not correct. Further, the petitioner stated that she had not received Party Whip to vote to their Party candidate is not correct because B-Forms proposing the candidates for the posts of President and Vice-President were given by both the parties in time and in respect of Congress Party B-Form was given to one Mr.Ijjada Tirupathi Rao and the same was accepted by all the other elected MPTCs of Congress Party but the petitioner did not sign the Whip issued by the Party functionary, but she simply refused to receive the same and as such the petitioner misrepresented the fact of issuing Party Whip in this regard because when all the five members had received and acknowledged the same the petitioner refused the same and hence it is treated as duly served. Further it is stated that as per B-Forms issued by Sri Regu Maheswara Rao, the Party Whip, on 21-7-2006 and as per the records available, the name of Smt.Kirla

Parvathi was proposed as President, being Congress Party MPTC Member and another MPTC Member also seconded her name but she refused to accept the same for the reasons unknown and she even refused to sit in the seats arranged Partywise and separately barricaded for Congress-I, T.D.P. and Independent and put in a representation for allotment of separate seat in the meeting hall away from her own Congress Party members. Thus when all five other MPTCs and one Independent voted in favour of Smt.Kirla Parvathi, against the Whip, she refused the proposal of her candidature to the post of President and also denied to raise her hand. It clearly shows that she colluded with opposite Party i.e., Telugu Desam Party and raised her right hand in support of T.D.P. in the Election of Mandal President and Vice-President violating Rule 11(4) under P.R. Code and G.O.Ms.No.173 dated 10-5-2006. It is further stated that as per the served acknowledgements in time and as per the information submitted by Mr.R.Maheswara Rao, Whip, the petitioner refused to accept the Party Whip and as per G.O.Ms.No.173 dated 10-5-2006 and Election Rules 11(4) for violation of Whip given by the Party any member of the Mandal Parishad elected on behalf of recognized political Party shall cease to be a member of the Mandal Parishad for disobeying the direction of the Party Whip so issued in

the manner prescribed and as such it is opined that Smt.Kirla Parvathi, elected as M.P.T.C. Member of Panukuvalasa on Congress Party Ticket (B-Form) violated the above Rule and disobeyed the Whip of Party and voted in favour of other (Telugu Desam Party) candidates for both President and Vice-President. It is a clear case of gross violation of Rule 11(4) of G.O.Ms.No.173 dated 10-5-2006 and hence the membership of Smt.Kirla Parvathi as MPTC in Pachipenta Mandal is declared as disqualified, rejecting her written explanation and therefore the impugned order was issued as per the Election Rules.

Respondents 3 and 4 filed W.V.M.P.No.2219/2006. The same preliminary objection relating to the maintainability of the Writ Petition had been taken. It is stated in para-5 of the counter affidavit filed by respondents 3 and 4 that the petitioner had contested and was elected as MPTC Member of Penukuvalasa MPTC, Pachipenta Mandal, Vizianagaram District on behalf of the Congress Party. It is further stated that the total members of MPTC of Pachipenta Mandal Parishad are 13; 6 members from Telugu Desam Party, 6 members from Congress Party and one independent had been elected as MPTCs. As per Section 153 of the Act the President and Vice-President of Mandal Parishad shall be elected

by and from among the elected members specified in clause (i) of sub-section (1) of Section 14 of the Act by show of hands duly obeying the Party Whip given by the recognized political parties concerned. On 19-7-2006 the President of District Congress Committee appointed Sri Regu Maheswara Rao i.e., 4th respondent and he in turn issued the Whip to all the MPTC members and notice was issued. The B-Form for the post of President on behalf of Congress Party was given to one Mr.Ijjada Tirupathi Rao, but the petitioner who was elected as MPTC Member from Congress-I Party affiliation, at the time of election to President and Vice-President, willfully and with an intention violated the Whip and voted in favour of Telugu Desam Party for the post of President and Vice-President. It is also stated that initially election for the President and Vice-President of Pachipental Mandal Parishad was held on 11-7-2006 and meeting was conducted for the post at 11 AM and co-option of the members was complied. While taking up the election to the post of President and Vice-President by the respondents, there were clashes between two political parties and there was law and order problem and as such the Presiding Officer through proper channel informed the District Election Authority to State Election Committee who in turn notified in Lr.No.1648/SEC.B1/2006 giving

schedule to conduct election to the said Mandal on 21-7-2006 at 11 A.M. It is further stated in para-7 that Mr.Regu Maheswara Rao who was the Congress Whip served the Whip to all its members. It is not correct that the petitioner had not received the Party Whip to vote to their Party candidates as B-Form proposing the candidate for the post of President and Vice-President was given to Mr.Ijjada Tirupathi Rao and the same was accepted by all other elected members of MPTC of Congress Party, but erroneously the petitioner did not sign on the Whip issued by the Party functionary. The petitioner simply refused to receive the same and the same was handed over to the respondent. Further it is stated that it is not correct to state that the Whip issued by the Party functionary was not served on her and in fact she simply refused to receive the same and as such the petitioner stated that the Whip proceedings was issued but she had not received, whereas all the five members received and acknowledged the same which was handed over to the respondents, except the petitioner. Further it is stated that as per the served acknowledgements in time and as per the information given by Mr.R.Maheswara Rao, the petitioner refused to accept the Party Whip. As per G.O.Ms.No.173, PR&RD Department, dated 10-5-2006 and election Rules 11(4), for violation of Whip given by the

Party any member of the Mandal Parishad, elected on behalf of a recognized political Party shall cease to be a member of the Mandal Parishad for disobeying the direction of the Party Whip so issued in the manner prescribed. As such it is opined that Smt.Kirla Parvathi elected as M.P.T.C. Member of Panukuvalasa on Congress Party Ticket (B-Form) had violated the Rule and disobeyed the Whip of the Party and voted in favour of other T.D.P. Party candidates for both President and Vice-President. Thus specific stand is taken that it is a clear case of gross violation of Rule 11(4) and hence the writ petitioner is disqualified. Thus specific stand is taken that the impugned order is in accordance with law.

W.P.No.18671/2006 is filed by the petitioners and respondents 6 and 7 came on record by way of implead applications. In this Writ Petition, specific stand is taken that the election dispute relating to the impugned proceedings already had been raised before the Principal District Judge, Khammam in E.P.No.971/2006 and the petitioners also filed I.A.No.1544/2006 praying for a direction to stay the operation of the impugned order dated 7-8-2006, but however, no orders were made. It is stated in para-3 of the affidavit filed in support of the Writ Petition that the election notification was issued on 10-6-2006 to conduct elections to the members of the

M.P.T.Cs. As per the said notification, the elections were schedule on 2-7-2006, nominations were accepted between 13-6-2006 and 17-6-2006, scrutiny took place on 18-6-2006, withdrawal took place on 21-6-2006, the final list of candidates was announced on 21-6-2006, election was held on 2-7-2006 and the counting took place on 4-7-2006. After the election the 1st petitioner was declared elected as MPTC Member of Hydershaipet, the 3rd petitioner was declared elected as MPTC Member of Kakaravai-2 and the 4th petitioner was declared elected as MPTC Member of Mahendrapuram. As per the schedule issued in the notification dated 10-6-2006 the Mandal Praja Parishad election was to take place on 11-7-2006. It is also stated that Tirumalayapalem village consists of 17 MPTCs and out of the same, T.D.P. won 5, C.P.M. won 5, Congress won 4 and Independent and other unrecognized candidates won 3 seats. The 1st petitioner and the other petitioners belong to Telugu Desam Party. It is further stated that on 11-7-2006 the authorities conducted election to the office of the President of Tirumalayapalem Mandal. Out of 17 MPTC members only 7 were present and there was no quorum to conduct the election and the same was postponed. It is pertinent to point out that there is an alliance between

TDP-CMP. CMP has to support the TDP candidates for the office of the President, MPP. Subsequently the matter was referred to the 2nd respondent by the 5th respondent for its decision and subsequently the 2nd respondent decided to conduct elections on 19-7-2006 to elect the President and Vice-President of the Mandal Parishad, Tirumalayapalem Mandal. It is pointed out that as per Rule 8(3) of the Rules issued in G.O.Ms.No.173, dated 10-5-2006, the authorities have to conduct election from the next day irrespective of the fact that whether it is declared as being public holiday or not. However the respondents for the reasons best known to them, did not conduct election on 12-7-2006. However, as per the directions of the 2nd respondent, the same was conducted on 19-7-2006. Further, it is stated that on 19-7-2006, the authorities conducted election to the office of the President, MPP, Tirumalayapalem and Vice-President along with the election of co-opted member. The election of the co-opted member took place between 10 AM to 1 PM. Subsequently the authorities took the election of the Mandal Parishad President at 3 PM. Out of the 17 MPTCs, 9 were present i.e., 5 MPTCs of CPM and 4 MPTC Members of TDP candidates. 4 Congress candidates, 3 Independent candidates along with one TDP Candidate were absent on that day. It is understood

that the State Party by its letter dated 15-7-2006 delegated the power to appoint a Whip to the President of District T.D.P. Leader. The said authority in turn appointed the Mandal Party President, one Sri Joguparthi Venkateswarly (T.D.P.) as Whip on 18-7-2006 and he in turn issued a Whip on 18-7-2006 to the Party candidates on the ground that they have to vote in favour of one Smt.Joguparthi Mangamma. It is further stated that the Whip issuing authority i.e., Smt.Joguparthi Venkateswarly is the brother-in-law of Smt.Joguparthi Mangamma. The said Smt.Joguparthi Mangamma in whose favour the Whip was issued was not present on 19-7-2006 and she did not participate in the election. In view of the same the election was conducted from among the left over candidates i.e., 5 MPTC candidates of CPM and 4 MPTC candidates of T.D.P. In the said election, the 1st petitioner was proposed and elected as Mandal Parishad President of Tirumalayapalem Mandal unanimously by the members present. Subsequently election took place to the office of the Vice-President of the Mandal and one Sri N.Bikshuma Reddy, belonging to MPTC Jupeda, CPM Party was elected as Vice-President of the Mandal and thereafter the 5th respondent declared the petitioners as elected as President and Vice-President. It is also further stated that

a show cause notice was also issued to J.Mangamma for unauthorized absence in the election meeting and subsequently she was also removed from the office of the MPTC and the same is evidenced amply to show that the petitioners are not at fault in not electing her as a candidate nominated by the T.D.P. However, the said fact was not considered by the respondents while issuing the impugned order and this itself shows that the respondents had passed the order mechanically which vitiates the entire proceedings. It is further stated that the Whip said to have been issued on 18-7-2006 by the Party authorities was not served upon the petitioners at any point of time even prior to the election or on the day of election i.e., 19-7-2006. Similarly, the 5th respondent did not read over the Whip to the petitioners. The same is evident from the minutes of the meeting of election proceedings. It is further stated that the 1st petitioner and the other petitioners referred in the explanation saying that there is a Whip as the candidate in whose favour the Whip was issued was absent from attending the election meeting, but however without considering all these facts and circumstances, the 5th respondent issued a show cause notice dated 21-7-2006 saying that the 1st petitioner and other petitioners, despite the issuance of Whip by the Party had acted

against the Whip and sought for explanation as to why the membership should not be cancelled. In pursuance of the same, the petitioners submitted detailed explanation dated 27-7-2006 wherein the petitioners detailed the fact that the candidate in whose favour the Whip was issued i.e., Smt.J.Mangamma, was intentionally absent from the day of election. Then the 5th respondent asked the members who were present on that day i.e., the 1st petitioner and the other petitioners and the 5 MPTC members of CPM to elect the President and the Vice-President from the members present. Accordingly the name of the 1st petitioner was proposed and he was elected unanimously as all the members supported him by raising their hands. Similarly, the Vice-President also was elected. Subsequently the 5th respondent issued the minutes of the meeting. It is further stated that the 5th respondent without taking into consideration the fact situation, based on a complaint made by the Whip Sri J.Venkateswarlu, who is none other than the brother-in-law of Smt.J.Mangamma in whose favour the Whip was issued, issued a show cause notice dated 21-7-2006 and the same was effectively replied. The 5th respondent without considering the absence of Smt.J.Mangamma in whose favour the Whip was issued had mechanically

passed the order of removal/cancellation of the membership of the petitioners as MPTCs by the impugned order dated 7-8-2006. It is reiterated by the petitioners that the Whip proceedings were not served on them and in fact the same is in violation of Rule 11(3) of the Rules issued in G.O.Ms.No.173. However, the 5th respondent without considering all the facts, namely, the service of the Whip, reading of the Whip and the absence of the candidate in whose favour the Whip was issued, mechanically passed the impugned order, that too at the behest of the Mandal Party President of the T.D.P. and the same is not only illegal, unjust but also arbitrary exercise of power and violative of Article 14 of the Constitution of India. Further it is stated that as per Rule 11(5) of the Rules issued in G.O.Ms.No.173, the 5th respondent passed a non-speaking order while considering the explanation submitted by the petitioners. On this ground alone, the impugned order is liable to be set aside. In fact the 5th respondent should have acted independently and passed a reasoned order, however the same is not mentioned in the impugned order. In such circumstances the petitioners approached this Court by filing the present Writ Petition since the concerned District Court was not inclined to grant any interim order.

Counter affidavit is filed by 5th respondent. It is stated in the counter affidavit of the 5th respondent that the petitioner had disobeyed the Whip issued by the T.D.P. Mandal President of Tirumalaipalem Mandal for election to the M.P.P. Tirumalaipalem on 19-7-2006 which was acknowledged by all the four petitioners. As per Rule 11(5) of G.O.Ms.No.173, PR&RD (Elections) Department, dated 10-5-2006, the petitioners had been disqualified after issuing show cause notices dated 21-7-2006 and after examining their explanations dated 27-7-2006 of the petitioners, vide Presiding Officer Order No.120/Elections/06 dated 7-8-2006. It is also stated that the schedule issued in the notification dated 10-6-2006 for conduct of M.P.P. election is not correct. In fact the State Election Commission had issued notification vide election notification No.1152/SEC/B1/2006 dated 27-6-2006 for conducting the M.P.P. elections. Further it is stated that as per the directions of the State Election Commission vide notification No.1152/SEC-B1/2006-2 dated 12-7-2006 and the orders of the District Election Authority Rc.No.3013/2006 dated 13-7-2006 the election to M.P.P. of M.P. Tirumalaipalem Mandal had been conducted on 19-7-2006. It is further stated that Smt.Joguparthy Mangamma, T.D.P. Whip candidate for election to M.P.P., M.P. Tirumalaipalem Mandal had not attended at the time

of election to M.P.P. at 3 P.M. and disobeyed the Party Whip. Further the remaining 4 MPTCs of T.D.P. had not been authorized by the Mandal T.D.P. for electing M.P.P. among any one of them. However Sri Aludasu Anjaneyulu, MPTC, T.D.P. was proposed by Smt.Kothapalli Saritha, MPTC, T.D.P. and seconded by Sri Nandigama Bhadrachary, MPTC, T.D.P. for being elected as M.P.P. of Mandal Parishad Tirumalaipalem Mandal. Another T.D.P. MPTC also accepted the nomination of Sri Aludasu Anjaneyulu for being elected as MPP by signing in minutes. As per Rule 11(5) of G.O.Ms.No.173, PR&RD (Elections) Department dated 10-5-2006 the MPTCs have to vote Party Whip candidate only. As such the five MPTCs of T.D.P. had disobeyed the Whip issued by the T.D.P. Mandal President which was acknowledged by these four petitioners. Hence the orders issued by the Presiding Officer disqualifying the 5 MPTCs is in accordance with Rules prescribed in G.O.Ms.No.173 dated 10-5-2006 after following the due procedure of law. Further it is stated in para-7 that the petitioners had acknowledged the Party Whip issued by the T.D.P. Mandal President well in advance on 18-7-2006 i.e., one day before the date of election. The 5 MPTCs of T.D.P. were well acquainted with the Party Whip issued by the T.D.P. Mandal President. The Whip

candidate disobeyed the Whip by not attending the election meeting at 3 P.M. on 19-7-2006. The other four MPTCs of T.D.P. who had not been authorized by the T.D.P. had participated in voting by electing Sri Aludasu Anjaneyulu as M.P.P. of M.P. Tirumalaipalem Mandal as against the Party Whip. As per Rule 11(3) of G.O.Ms.No.173 dated 10-5-2006 the T.D.P. Mandal President who is the authorized person to issue the Whip had served the Whip among their Party MPTCs and submitted the acknowledgement to the Presiding Officer within the schedule time before election meeting. As per Rule 11(5) of G.O.Ms.No.173 dated 10-5-2006 the Presiding Officer had received a written report from the Party Whip authority on the same day of election that the petitioners had disobeyed the Whip in connection with the election and requested the Presiding Officer to take action as per Rules. The Presiding Officer had issued show cause notices to the petitioners as to why they should not be declared to have ceased to hold office on 21-7-2006. The explanations submitted by the petitioners are not in accordance with Rules prescribed in G.O.Ms.No.173, dated 10-5-2006 and therefore orders had been issued disqualifying the petitioners. Specific stand is taken that after following the procedure in G.O.Ms.No.173 dated 10-5-2006 and after examining the explanations of the

petitioners, as per Rule 11(5) of the said G.O., it was construed that the petitioners had clearly disobeyed the Party Whip issued by the T.D.P. Mandal President M.P. Tirumalaipalem Mandal and therefore the petitioners had been disqualified to hold the office of MPTCs of Telugu Desam Party.

W.V.M.P.No.2190/2006 and W.V.M.P.No.2191/2006 are filed wherein specific stand had been taken that already the jurisdiction of the competent District Court had been invoked and inasmuch as there is violation of the Whip issued, the petitioners had been duly disqualified. Virtually, substantially the same stand had been taken in both the vacate applications.

The writ petitioner in **W.P.No.21931/2006** had impugned the order dated 7-8-2006 in proceedings No.120/Elections/06. It is stated in the affidavit filed in support of the Writ Petition that the election notification was issued on 10-6-2006 to conduct elections to the Members of M.P.T.Cs. and as per the notification, elections were scheduled to be held on 2-7-2006, nominations were accepted between 13-6-2006 to 17-6-2006, scrutiny took place on 18-6-2006, withdrawals took place on 21-6-2006, the final list of contesting candidates was announced on 21-6-2006, the elections were held on 2-7-2006, the counting took place on 4-7-2006 and the

petitioner was declared elected as MPTC from Tallecheruvu. As per the schedule issued in the notification dated 10-6-2006 the election for the posts of President and Vice-President was to take place on 11-7-2006. It is further stated that the Tirumalayapalem Mandal Parishad consists of 17 MPTCs. Out of the same, T.D.P. won 5, C.P.M. won 5, Congress won 4 and Independent and other unrecognized candidates won 3 seats. The petitioner won the election as a T.D.P. candidate. It is also stated that on 11-7-2006, the authorities conducted election to the office of the President of Tirumalayapalem Mandal. Out of elected 17 MPTC members only 7 members were present and there was no quorum to conduct the election and hence the same was postponed. It is pertinent to point out that there is an alliance between T.D.P. and C.P.M. whereby C.P.M. would support the T.D.P. candidates for the office of the President, Mandal Praja Parishad. Subsequently the matter was referred to the 2nd respondent by the 5th respondent for its decision and subsequently the 2nd respondent decided to conduct the elections on 19-7-2006 to elect the President and Vice-President of the Mandal Parishad, Tirumalayapalem Mandal. It is necessary to point out at this juncture that as per Rule 8(3) of the Rules issued in G.O.Ms.No.173, dated 10-5-

2006, the authorities have to conduct the election from the next day irrespective of the fact whether it is declared as being a public holiday or not. However, the respondents for the reasons best known to them, did not conduct the elections on 12-7-2006, but as per the directions of the 2nd respondent the same were conducted on 19-7-2006. Through a letter dated 15-7-2006, the State Telugu Desam Party had delegated the power to appoint a Whip to the President of District T.D.P. Leader. The said authority in turn appointed Mandal Telugu Desam Party President one Sri Joguparthi Venkateswarlu as Whip on 18-7-2006 and he in turn issued Whip on 18-7-2006 to the Party candidates informing that they have to vote in favour of the petitioner. As per the directions of the 2nd respondent on 19-7-2006, the authorities conducted election to the office of President, M.P.P. Tirumalayapalem and Vice-President along with the election of Co-opted Member. The election of co-opted member took place between 10 A.M. to 1 P.M. Subsequently the authorities took the election of the Mandal Parishad President at 3 P.M. Out of the 17 MPTCs, 10 were present i.e., 5 MPTCs of C.P.M., 5 M.P.T.C. members of T.D.P. candidates including the petitioner and as the name of the petitioner was not proposed from out of the elected candidates belonging to

T.D.P. as per the Whip issued the petitioner walked away from the hall where the election was conducted for the post of President and Vice-President consequent to which there were only 9 members present at the relevant point of time of election. Consequent to the said elections, one Mr.A.Anjaneyulu belonging to Telugu Desam Party was elected as the President and Mr.N.Biksham Reddy belonging to C.P.M. was elected as the Vice-President. It is further stated that a show cause notice also was issued to me for my absence at the election meeting by the 5th respondent and the petitioner submitted explanation bringing to the notice of the 5th respondent that because of the non-proposal by any of the co-members belonging to Telugu Desam Party the petitioner having got hurt left the election hall on 22-7-2006. The 5th respondent without considering the explanation had passed the impugned order removing the petitioner from the office of the MPTC mechanically which vitiates the entire proceedings. It is also stated that subsequently the Party meeting was held in which petitioner questioned the action of the elected four members in not proposing her name pursuant to the Whip issued on 18-7-2006 to which they took a lame excuse that they were not served with the Whip and the 5th respondent who would have strictly

adhered to the instructions as contained in G.O.Ms.No.173 dated 10-5-2006 did not brought to the notice of the Whip by reading before the elections to the posts of President and Vice-President are conducted, consequent to which they had proposed the name of the elected President Sri A.Anjaneyulu. It is further stated that it is reliably learnt that the elected other four T.D.P. candidates had submitted their explanations to the same effect to the show cause notice issued by the 4th respondent on 21-7-2006. The said explanation is not satisfactory and the 5th respondent had passed the order dated 7-8-2006 removing them from the members of M.P.T.C. Further specific stand is taken that E.P.No.971/2006 was filed on the file of District Court and an application praying for stay also had been filed. In the said circumstances, the impugned order was questioned.

The 5th respondent filed W.V.M.P.No.2210/2006 to vacate the impugned order wherein the objection relating to the maintainability had been raised. It is stated that the petitioner herself is the Telugu Desam Party Whip candidate for election to the Mandal President, M.P.P. Tirumalaipalem Mandal and she acknowledged the Party Whip issued by the Telugu Desam Party Mandal President, Tirumalaipalem Mandal well in advance. But the petitioner had not attended at the time of election at 3

P.M. on 19-7-2006 and not contested for the post of Mandal President, Tirumalaipalem Mandal. It is clear that she disobeyed the Party Whip by not attending the election meeting on 19-7-2006 at 3 P.M. As per Rule 11(5) of G.O.Ms.No.173 dated 10-5-2006 the petitioner had been disqualified after issuing show cause notice on 21-7-2006 and after examining her explanation dated 27-7-2006. It is also further stated that as per the schedule issued in the notification dated 10-6-2006 the election for the posts of President and Vice-President proposed to be held on 11-7-2006 was postponed for want of quorum and rescheduled on 19-7-2006 by the State Election Authority vide their notification No.1152/SEC/Ex.B.1/2006-2 dated 12-7-2006. As per the instructions of the State Election Authority the election to the posts of President and Vice-President to M.P.P. Tirumalaipalem Mandal was conducted on 19-7-2006 at 3 P.M. but not on 11-7-2006 as stated by the petitioner. Further it is stated that it is not correct that the petitioner had attended the election meeting on 19-7-2006 at 3 P.M. and as her name was not proposed for the the post of Mandal Parishad by other T.D.P. MPTCs she got hurt and walked out from the election hall. In fact the petitioner had not attended the election meeting at 3 P.M. on 19-7-2006 and had not contested for the post of Mandal President as

per the Party Whip. It is further stated that the petitioner had been disqualified as per the Rules in G.O.Ms.No.173 dated 10-5-2006 duly observing the procedure only. It is further stated that the acknowledged copies of the Party Whip issued by the T.D.P. Mandal President were submitted to the Presiding Officer by the Mandal President well in advance before the election to the Mandal President. It is further stated in para-10 of the counter affidavit that as per the Party Whip issued by the T.D.P. Mandal President, Tirumalaipalem Mandal, the petitioner was to participate in the election which was held for the post of President and Vice-President, M.P.P. Tirumalaipalem Mandal on 19-7-2006 at 3 P.M. but she failed to attend the election meeting and had not contested for the post of M.P. Tirumalaipalem Mandal. The five T.D.P. MPTCs including the petitioner were well acquainted with the Party Whip issued by the T.D.P. Mandal President. These five MPTCs of Telugu Desam Party had already acknowledged the Party Whip issued by the Mandal President well in advance before the election.

W.P.No.16824/2006 is filed by the writ petitioners questioning the proceedings Rc.No.42 dated 3-8-2006 on the file of the 4th respondent. Respondents 5 and 6 were impleaded as per the orders in W.P.M.P.No.21715/2006.

It is stated by the 1st petitioner that she had been elected as member of M.P.T.C. of Phirangipuram-IV Mandal of Guntur District in the recent elections held on 2-7-2006 to the Territorial Constituencies of Mandal Parishads and Zilla Parishads. Similarly the 2nd petitioner had been elected as member of M.P.T.C. of Ponugupadu of Phirangipuram Mandal of Guntur District in the recent elections held on 2-7-2006 the Territorial Constituencies of Mandal Parishads and Zilla Parishads. Similarly the 3rd petitioner had been elected as member of M.P.T.C. of Takkellapadu of Phirangipuram Mandal of Guntur District in the recent elections held on 2-7-2006 to the Territorial Constituencies of Mandal Parishad and Zilla Parishad. The 4th petitioner had been elected as member of M.P.T.C. of Merakapudi of Phirangipuram Mandal of Guntur District in the elections held on 2-7-2006 to the Territorial Constituencies of Mandal Parishad and Zilla Parishad. Similarly the 5th petitioner had been elected as member of M.P.T.C. of Nudurpadu of Phirangipuram Mandal of Guntur District in the elections held on 2-7-2006 to the Territorial Constituencies of Mandal Parishads and Zilla Parishad. All the petitioners had been elected to the said posts on behalf of Indian National Congress Party along with 8 others. It is also stated that thereafter the 4th

respondent was appointed as Presiding Officer of Phirangipuram Mandal Parishad to conduct elections to the posts of co-opted member, President and Vice-President. Accordingly the 4th respondent issued notices to all the members of M.P.T.Cs. in Form-I on 6-7-2006 requesting the members to attend the meeting to be held on 11-7-2006 at 1 p.m. to elect the President and Vice-President of Mandal Parishad. Since the required quorum was not present on 11-7-2006, the meeting was rescheduled on 12-7-2006 at 3 p.m. and pursuant to the revised notice issued by the 4th respondent all the members were present at 3 p.m. on 12-7-2006 at the venue stipulated in the notice. Thereafter the elections for the posts of President and Vice-President were held and in the said elections the 1st petitioner was elected as President and the 2nd petitioner was elected as Vice-President of Phirangipuram Mandal Parishad and they were administered oath of office and took charge on 22-7-2006. While the matters stood thus, before the petitioners 1 and 2 had taken charge, the 4th respondent issued show cause notice vide Rc.No.42/2006-B dated 15-7-2006 to the 1st petitioner and other petitioners stating that one Talakola David had been appointed as Whip on behalf of the Indian National Congress Party under Rule

11(1) of G.O.Ms.No.173 PR&RD Department, dated 10-5-2006. The Whip after his appointment, issued Whip under Rule 11(3) of the said G.O. directing all the members elected on behalf of the Indian National Congress Party to exercise franchise in favour of Smt.Alla Rattamma and Munnangi Shiva Kumari nominated for the posts of President and Vice-President, respectively, on behalf of the Indian National Congress Party. It is further stated that for defying the Whip of the Party, notice had been issued wherein the Whip had requested to disqualify the petitioners from being members of MPTCs and the petitioners had been directed to explain in 7 days from the date of receipt of the said notice or otherwise appropriate action would be taken as per law. It is further stated in para-5 of the affidavit that after receipt of the show cause notice dated 15-7-2006 the petitioners submitted their explanations on 22-7-2006 to the 4th respondent stating that in fact the petitioners had been elected as the members of MPTCs of Phirangipuram-IV Mandal on behalf of Indian National Congress Party and the Party nominated the 1st petitioner to contest as the President and the 2nd petitioner as the Vice-President in the election held on 12-7-2006 for the said posts. Pursuant to the said decision, the petitioners 1 and 2 had contested and won the election. It is further stated that no notice had been

issued and received by the petitioners either regarding the appointment of Sri Talakola David as Whip or the alleged Whip issued by Sri avid informing about the nomination of Smt.Alla Rathamma and Munnangi Shiva Kumari for the posts of President and Vice-President respectively on behalf of the Indian National Congress Party. The petitioners had asserted in their reply that no signatures of acknowledgement of such a notice had been affixed or obtained by the Whip and therefore the question of defying the alleged Whip by the petitioners does not arise at all. The petitioners further contended that the show cause notice is required to be issued within 30 days from 12-7-2006 and since the same is not complied with the allegation of issuing the Whip is false and untenable and therefore the petitioners requested the 4th respondent to drop further action. It is also stated that thereafter the 4th respondent passed the impugned order dated 3-8-2006 in Pro.Rc.No.42/200-B disqualifying the petitioners from the posts of members of MPTC pursuant to the powers vested under G.O.Ms.No.173 dated 10-5-2006 on the ground that it was informed by the Whip appointed by the Indian National Congress Party that the petitioners refused to receive the Whip and voted against the candidate nominated by the Party and the explanation

submitted by the petitioners is not convincing and satisfactory. Several grounds are raised in para-6 of the affidavit filed in support of the Writ Petition.

A counter affidavit and additional counter affidavit also had been filed by the 5th respondent wherein the 5th respondent had substantially taken the same stand as that of the 4th respondent. An objection relating to the maintainability of the Writ Petition had been taken. It is stated that the Presiding Officer, Mandal Parishad, Phirangipuram had issued notice on 15-7-2006 to the members who violated the Party Whip and voted against the selected members. The members who received the notices submitted their explanation on 22-7-2006 which is not in dispute. It is further stated that Sri Muppalaneni Seshagiri Rao, President, District Congress Committee, Guntur had issued Party Whip in Annexure-II on 11-7-2006 stating that Sri Talakola David had been appointed as the Party Whip in connection with conduct of indirect elections to the President/Vice-President which were scheduled to be held on 11-7-2006 and directed the members of all elected Indian National Congress members to be present on 11-7-2006 at the special meeting and vote in favour of Alla Rathamma and Munnangi Shiva Kumari for the posts of President and Vice-President respectively. As per the Party Whip the

elected Indian National Congress members should vote to the above persons. It is further stated that the Indian National Congress Party issued Party Whip in favour of Kommareddy Vijayarani and Koratala Murahari Rao to the posts of President and Vice-President as stated by the petitioners is not correct. There is no evidence relating to the issue of Party Whip in favour of the petitioner for the post of President of Mandal Parishad. As per the letter given by the Whip to the Presiding Officer, Mandal Parishad, Phirangipuram, the petitioner had rejected to take the Party Whip intentionally and so the question of acknowledgement of such notice does not arise. The Presiding Officer, Mandal Parishad, Phirangipuram had issued the notice to the members who violated the Whip within the stipulated time and therefore the request of the petitioners is not considerable. It is also stated that the notification relating to the process of conduct of indirect elections to the posts of President and Vice-President contained in G.O.Ms.No.173 dated 10-5-2006 was also published in A.P. Gazette. Hence the impugned orders had been made with the powers vested only. It is further stated that Sri Muppalaneni Seshagiri Rao who is the President of the Indian National Congress District Unit had issued Whip on 10-7-2006 in favour of Sri Talakola David and issued directions to all the elected members of Indian

National Congress Party to vote in favour of Smt.Alla Rattamma and Shiva Kumari for the posts of President and Vice-President respectively of Mandal Parishad, Phirangipuram and the same had been communicated to all the Indian National Congress members. It is also further stated that Sri Talakola David who was appointed as Whip had obtained acknowledgements from 8 members belonging to Indian National Congress and intimated the same to the Presiding Officer, Mandal Parishad, Phirangipuram before the commencement of the meeting and further stated in his letter dated 11-7-2006 addressed to the Presiding Officer that 5 members belonging to Indian National Congress had refused to take the Party Whip and requested the Presiding Officer on 12-7-2006 to disqualify the members who violated the Party Whip. The Presiding Officer had followed the prescribed election process as issued by the State Election Commission. It is further stated that Sri Muppalaneni Seshagiri Rao, Indian National Congress President, District Unit, Guntur had issued the Party Whip on 10-7-2006 in favour of Sri Talakola David, MPTC, Phirangipuram-I. Sri Talakola David, Party Whip, in turn had communicated the same to the members of Indian National Congress who were elected as MPTC members on 11-7-2006 and obtained acknowledgements from 8

members and the same is the clear evidence of serving the Party Whip. The contention of the petitioners that no enquiry was conducted in the matter is false. The Presiding officer had acted as per the election law and there is no violation of any law. Certain factual issues also had been high-lighted in the additional counter affidavit filed by the 5th respondent.

The 1st petitioner in the aforesaid Writ Petition i.e., W.P.No.16824/2006, had filed **W.P.No.17778/2006** questioning G.O.Ms.No.321, Panchayat Raj & Rural Development, dated 14-8-2006 and the said G.O. reads as hereunder :

Government of Andhra Pradesh
Abstract

Mandal Parishad – Appointment of Smt.Rattamma Alla, MPTC Member, Gundalapadu, as Temporary President, Mandal Parishad, Phirangipuram, Guntur District – Orders – Issued.

Panchayat Raj and Rural Development (MDL.II-4) Department

G.O.Ms.No.321 Dated : 14-8-2006

Read the following :

1. From Chief Executive Officer, Z.P., Guntur District Lr.No.4065/2006-P3 dated 8-8-2006.

ORDER:

The Chief Executive Officer, Zilla Parishad, Guntur District in the reference read above, has

informed that the Presiding Officer, Mandal Parishad, Phirangipuram has ceased the membership of five INC members including elected President/Vice-President of Mandal Parishad viz., Smt.Kommareddy Vijayarani, President and Sri Koratala Murahari Rao, Vice-President for disobeying the Party Whip. Therefore the offices of the President and Vice-President of Mandal Parishad, Phirangipuram, Guntur District have fallen vacant.

2. The Govt. after careful consideration of the proposal hereby appoints under sub-section (6) of Section 165 of the A.P. Panchayat Raj Act 1994 (Act 13/1994) Smt.Rattamma Alla, MPTC Member, Gundalapadu, Mandal Parishad Phirangipuram, Guntur District as temporary President of Mandal Parishad, Phirangipuram, Guntur District and she shall exercise the powers and perform the functions subject to such restrictions and conditions as prescribed until a new President and Vice-President assumes office after their election.

(BY ORDER AND IN The NAME OF THE GOVERNOR OF A.P.)

M.Samuel,
Prl. Secretary to Govt.

It is stated in the affidavit filed in support of the Writ Petition that the 4th respondent was appointed as Presiding Officer of Phirangipuram Mandal Parishad to conduct elections to the posts of co-opted member, President and Vice-President. Accordingly the 4th respondent issued notices to all the members of

M.P.T.Cs. in Form-I, on 6-7-2006 requesting the members to attend the meeting to be held on 11-7-2006 at 1 p.m. to elect the President and Vice-President of Mandal Parishad. Since the required quorum was not present on 11-7-2006 the meeting was rescheduled on 12-7-2006 at 3 p.m. Pursuant to the revised notice issued by the 4th respondent all the members were present at 3 p.m. on 12-7-2006 at the venue stipulated in the notice. Thereafter election for the posts of President and Vice-President were held and in the said elections the petitioner was declared elected as the President of Phirangipuram Mandal Parishad and she was administered oath of office and took charge on 22-7-2006. It is further stated that while the matters stood thus, before the petitioner took charge, the 4th respondent issued show cause notice vide Rc.No.42/2006-B dated 15-7-2006 to the petitioner stating that one Talakola David had been appointed as Whip on behalf of the Indian National Congress Party under Rule 11(1) of G.O.Ms.No.173, PR&RD dated 10-5-2006 and the Whip after his appointment issued Whip under Rule 11(3) of the said G.O. directing all the members elected on behalf of Indian National Congress Party to exercise franchise in favour of Smt.Alla Rattamma and Munnangi Shiva Kumari

nominated for the posts of President and Vice-President respectively on behalf of the Indian National Congress Party. It is further stated that the petitioner was alleged to have defied the Whip and voted against the aforesaid nominees in the elections held on 12-7-2006 for the said posts and in view of the same the Whip had requested to disqualify the petitioner from the MPTC and was directed to explain within 7 days from the date of receipt of the notice failing which appropriate action would be taken as per law. It is further stated that after receipt of the show cause notice dated 15-7-2006 the petitioner submitted her explanation on 22-7-2006 to the 4th respondent stating that in fact the petitioner was elected as the member of MPTC of Phirangipuram-IV Mandal on behalf of Indian National Congress Party and the Party nominated the petitioner to contest as the President in the election held on 12-7-2006 for the said post. Pursuant to the said decision, the petitioner had contested and won the election. It is further stated that it is equally a fact that no notice had been issued and received by the petitioner either regarding the appointment of Sri Talakola David as Whip or the alleged Whip issued by Sri David informing about the nomination of Smt.Alla Rattamma and Munnangi Shiva Kumari for the posts of President and Vice-President respectively on behalf of the Indian

National Congress Party. It is further stated that the petitioner asserted in her reply that no signatures of acknowledgements of such a notice had been affixed or obtained by the Whip and therefore the question of defying the alleged Whip by the petitioner does not arise at all. It is further stated that the petitioner contended that the show cause notice is required to be issued within 30 days from 12-7-2006 and since the same is not complied with, the allegation of issuing the Whip is false and untenable and therefore the petitioner requested the 4th respondent to drop further action. It is also further stated that the 4th respondent passed the impugned order dated 3-8-2006 in Pro.Rc.No.42/2006-B duly disqualifying the petitioner from the post of member of MPTC pursuant to the powers vested under G.O.Ms.No.173 dated 10-5-2006 on the ground that it was informed by the Whip appointed by the Indian National Congress Party that the petitioner refused to receive the Whip and voted against the candidate nominated by the Party and the explanation submitted by the petitioner is not convincing and satisfactory. Therefore the petitioner is constrained to approach this Court assailing the validity and legality of the order passed by the 4th respondent dated 3-8-2006. It is also further stated that the 1st respondent issued

G.O.Ms.No.321 dated 14-8-2006 appointing Smt.Alla Rathamma as temporary President by exercising power under Section 165(6) of the Act. The 1st respondent is vested with power of appointing temporary President or Vice-President as the case may be when the office of the President is vacant or the President had been continuously absent from the Mandal for more than 15 days or incapacitated for more than 15 days. Since the petitioner had been disqualified from holding the post of member but still she is exercising the functions of the President, the question of the post of President falling vacant does not arise. Further, specific stand is taken that the said G.O. had been issued after filing the Writ Petition No.16824/2006 praying to suspend the order of disqualification.

W.V.M.P.No.2090/2006 is filed by the 4th respondent wherein the objection relating to the maintainability of the Writ Petition had been taken and it is stated that the Presiding Officer, Mandal Parishad, Phirangipuram had issued notice on 15-7-2006 to the members who violated the Party Whip and voted against the selected members. The members who received the notices submitted their explanation on 22-7-2006 is not in dispute. However it is stated that Sri Muppalaneni Seshagiri Rao, President, District Congress Committee,

Guntur had issued Party Whip on 11-7-2006 stating that Sri Talakola David had been appointed as Party Whip in connection with the conduct of indirect elections to the posts of President and Vice-President which were scheduled to be held on 11-7-2006 and directed the members of all elected Indian National Congress members to be present on 11-7-2006 at the special meeting and to vote in favour of Alla Rattamma and Munnangi Shiva Kumari for the posts of President and Vice-President respectively. As per the Party Whip the elected Indian National Congress members should vote to the above said persons. The Indian National Congress Party issued Party Whip in favour of Kommareddy Vijayarani and Koratala Murahari Rao to the posts of President and Vice-President as stated by the petitioner is not correct and there is no evidence relating to the issuance of the Party Whip in favour of the petitioner for the post of President of the Mandal Parishad. As per the letter given by the Whip to the Presiding Officer, Mandal Parishad, Phirangipuram, the petitioner had rejected to take the Party Whip intentionally and therefore the question of acknowledgement of such a notice does not arise. The Presiding Officer, Mandal Parishad, Phirangipuram had issued notice to the members who violated the Whip within the selected time and therefore

the request of the petitioner is not considerable. It is also further stated that the Government had issued orders vide G.O.Ms.No.321 dated 14-8-2006 for filling up the vacant post of Mandal Parishad, Phirangipuram on the report of the concerned Officers and powers vested under sub-section (6) of Section 165 of the Act.

19. Section 165 of the Act deals with **Powers and functions of President and Vice-President** and sub-section (6) specifies :

> "When the office of the President is vacant or the President has been continuously absent from the Mandal for more than fifteen days or is incapacitated for more than fifteen days and there is either a vacancy in the office of the Vice-President or the Vice-President has been continuously absent from the Mandal for more than fifteen days or is incapacitated for more than fifteen days, the powers and functions of the President shall devolve on a member of the Mandal Parishad appointed by the Government in this behalf. The member so appointed shall be styled as the temporary President and eh shall exercise the powers and perform the functions of the President subject to such restrictions and conditions as may be prescribed until a new President or Vice-President assumes office after his election or until the President or the Vice-President, returns to the Mandal or recovers from his incapacity, as the case may be."

20. As already referred to supra, though the

G.O.Ms.No.321, Panchayat Raj & Rural Development Department, dated 14-8-2006 had been questioned in W.P.No.17778/2006, this is only a consequential order to the order which had been impugned in W.P.No.16824/2006.

21. Several procedural illegalities and irregularities are pointed out and specific instances of contravention of the present Rules also had been pointed out. Relating to the service or non-service of notice and the effect thereof and the procedure to be followed in this regard, strong reliance was placed on the decision referred (10) supra**.** Further, reliance was placed on the decision of this Court referred (11) supra**.**

22. It is true that certain procedural irregularities and infirmities had been pointed out even in the light of the respective stands taken in the counter affidavits. It is contended that by non-compliance of the procedure inasmuch as the decision making process is vitiated, the impugned orders to be quashed, if need be by sending the matters back with appropriate directions. The nature of orders which were made and the ground that these are non-speaking orders also had been highlighted in elaboration. Service or non-service of notice in the peculiar facts of the cases on hand appear to be more a factual controversy in the light of the respective stands

taken by the parties. Submissions in elaboration had been made in relation to certain impugned orders being non-speaking orders. It is true that under Section 153-A of the Act, specific power to grant interim orders had not been conferred. It is however pertinent to note that the Constitutionality of the said provision had not been called in question by any one of the writ petitioners. It is also pertinent to note that the District Court is conferred with the jurisdiction to adjudicate upon such disputes. When the District Court is conferred with such power and jurisdiction to entertain such disputes, the District Court also has power to grant interim orders in appropriate cases and such power to be inferred by implication though the statutory provision is silent in that regard. Any other interpretation of Section 153-A of the Act in a way would be defeating the very object with which the said provision had been introduced in the Act. It may also not be out of context to observe that the District Court is the highest Court in Subordinate Judicial hierarchy. It is not a mere remedy or empty formality and the District Court as a competent Court may definitely look into all the aspects involved in a given case and may also pass appropriate orders. Certain submissions were made in relation to G.O.Ms.No.321, dated 14-8-2006 which had been challenged in W.P.No.17778/2006. It is needless to say

that the said order was made in consequence of the order impugned in W.P.No.16824/2006. It is no doubt true that the mere existence of an alternative remedy may not operate as a bar to exercise the power and jurisdiction under Article 226 of the Constitution of India. The wisdom of the Legislature in conferring jurisdiction on District Court cannot be totally ignored while exercising powers either under Article 32 or under Article 226 of the Constitution of India, as the case may be. It may not be out of context also to observe that it would be appropriate if steps are taken to further clarify the Legislative vacuum, if any created in relation to the granting of interim orders by the concerned District Courts while exercising the jurisdiction conferred under the Act, or otherwise in this regard. In the light of the over-all facts and circumstances and also in the light of the respective stands taken by the parties, this Court is of the considered opinion that it would be just and appropriate to give opportunity to the writ petitioners to raise all these grounds and also additional grounds if any if they choose to do so by invoking the jurisdiction of the competent Court, District Courts in this regard. As far as, G.O.Ms.No.321, PR&RD dated 14-8-2006 which had been challenged W.P.No.17778/2006 is concerned, the same is hereby quashed, giving liberty to the competent authority to make appropriate orders in the event of the

writ petitioner not approaching the concerned District Court and obtaining appropriate orders within the time granted by his Court as specified hereafter. Accordingly, in W.P.Nos.15399, 17533, 16824, 18346, 18671 and 21931 of 2006, the interim suspension granted by this Court in the respective Writ Petitions to be operative for a period of three months from the date of receipt of this order and accordingly liberty is given to the writ petitioners to approach the competent Court, District Courts and institute appropriate proceedings and also move appropriate applications for obtaining interim orders and it is needless to say that the concerned District Courts to make appropriate orders in the light of the facts and circumstances in a particular given case. As far as, W.P.No.18671/2006 is concerned, the District Court, Khammam to make an endeavour to dispose of the main petition itself at an early date and further to pass appropriate orders in I.A.No.1544/2006 in E.P.No.971/2006 pending before the said Court at the earliest point of time inasmuch as this Court is making an order of extension of the interim order granted by this Court to be operative only for a period of three months from the date of receipt of this order. Accordingly, this batch of Writ Petitions are being disposed of with the above directions. In the peculiar facts and circumstances,

though this Court is of the considered opinion that the Writ Petitions as such are maintainable and they cannot be thrown just on the ground of alternative remedy as already specified supra, there shall be no order as to costs.

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Justice P.S. Narayana

Date : -1-2007

L.R. copy to be marked : YES / NO

AM

Date: 24th January, 2007

Request is made by the Counsel on record that the observations made if any by this Court not to come in the way of the District Courts while dealing with the respective matters.

In the interest of the parties, it is clarified that the concerned District Courts to entertain and dispose of the matters considering the merits and demerits of the case not being influenced by any of the observations made by this Court.

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Justice P.S.Narayana

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[1] 1998 AIR SCW 3345

[2] 2005(8) S.C.C. 264

[3] AIR 1985 S.C. 1147

[4] 2005 AIR SCW 3727=(2005) 142 STC 1 = (2005) 6 SCC 499

[5] AIR 1953 S.C. 357

[6] 2006(9) SCALE 390

[7] AIR 1977 S.C. 898

[8] AIR 1989 S.C. 2113

[9] 1985(4) SCC 337

[10] 2002(4) ALT 661 (DB)

[11] 2004(5) ALT 563

[12] 2005(2) ALT 274

[13] AIR 1994 S.C. 1558

[14] (2000) 10 SCC 482

[15] 2005(1) ALT 552 (DB) = 2005(1) ALD 657

[16] AIR 1950 S.C. 163

[17] AIR 1954 S.C. 207

[18] AIR 1958 S.C. 86

[19] AIR 1961 S.C. 1506

[20] AIR 1961 S.C. 372

[21] 2002(4) ALD 660 (DB) = 2002(6) ALD 18

[22] 2006(2) ALT 76

[23] 2006(8) SCJ 907

[24] 1995(1) ALT 853